

Federal Reserve System

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sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

Section 4A-506. Rate of Interest

(a) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

Section 4A-507. Choice of Law

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction

governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

[55 FR 40801, Oct. 5, 1990; 55 FR 47428, Nov. 13, 1990]

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

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AUTHORITY: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

Subpart A—International Operations of United States Banking Organizations

SOURCE: 56 FR 19565, Apr. 29, 1991, unless otherwise noted.

§ 211.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Federal Reserve Act ("FRA") (12 U.S.C. 221 *et seq.*); the Bank Holding Company Act of 1956 ("BHC Act") (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 ("IBA") (12 U.S.C. 3101 *et seq.*). Requirements for the collection of information contained in this regulation have been approved by the Office of Management and Budget under the provision of 44 U.S.C. 3501, *et seq.* and have been assigned OMB numbers 7100–0107; 7100–0109; 7100–0110; 7100–0069; 7100–0086; and 7100–0073.

(b) *Purpose.* This subpart sets out rules governing the international and foreign activities of U.S. banking organizations, including procedures for establishing foreign branches and Edge corporations to engage in international banking and for investments in foreign organizations.

(c) *Scope.* This subpart applies to:

- (1) Corporations organized under section 25(a) of the FRA (12 U.S.C. 611–631), "Edge corporations";
- (2) Corporations having an agreement or undertaking with the Board under section 25 of the FRA (12 U.S.C. 601–604a), "Agreement corporations";
- (3) Member banks with respect to their foreign branches and investments in foreign banks under section 25 of the FRA (12 U.S.C. 601–604a);¹ and
- (4) Bank holding companies with respect to the exemption from the nonbanking prohibitions of the BHC Act afforded by section 4(c)(13) of the BHC Act (12 U.S.C. 1843(c)(13)).

§ 211.2 Definitions.

Unless otherwise specified, for the purposes of this subpart:

(a) An *affiliate* of an organization means:

- (1) Any entity of which the organization is a direct or indirect subsidiary; or

¹Section 25 of the FRA, which refers to national banking associations, also applies to state member banks of the Federal Reserve System by virtue of section 9 of the FRA (12 U.S.C. 321).

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(2) Any direct or indirect subsidiary of the organization or such entity.

(b) *Capital Adequacy Guidelines* means the Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (12 CFR part 208, app. A).

(c) *Capital and surplus* means paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

(d) *Directly or indirectly*, when used in reference to activities or investments of an organization, means activities or investments of the organization or of any subsidiary of the organization.

(e) *Eligible country* means a country that, since 1980, has restructured its sovereign debt held by foreign creditors, and any other country that the Board deems to be eligible.

(f) An Edge corporation is *engaged in banking* if it is ordinarily engaged in the business of accepting deposits in the United States from nonaffiliated persons.

(g) *Engaged in business* or *engaged in activities* in the United States means maintaining and operating an office (other than a representative office) or subsidiary in the United States.

(h) *Equity* means an ownership interest in an organization, whether through:

(1) Voting or nonvoting shares;

(2) General or limited partnership interests;

(3) Any other form of interest conferring ownership rights, including warrants, debt, or any other interests that are convertible into shares or other ownership rights in the organization; or

(4) Loans that provide rights to participate in the profits of an organization, unless the investor receives a determination that such loans should not be considered equity in the circumstances of the particular investment.

(i) *Foreign* or *foreign country* refers to one or more foreign nations, and includes the overseas territories, dependencies, and insular possessions of those nations and of the United States, and the Commonwealth of Puerto Rico.

(j) *Foreign bank* means an organization that:

(1) Is organized under the laws of a foreign country;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations;

(4) Receives deposits to a substantial extent in the regular course of its business; and

(5) Has the power to accept demand deposits.

(k) *Foreign branch* means an office of an organization (other than a representative office) that is located outside the country under the laws of which the organization is established, at which a banking or financing business is conducted.

(l) *Foreign person* means an office or establishment located, or individual residing, outside the United States.

(m) *Investment* means: (1) The ownership or control of equity;

(2) Binding commitments to acquire equity;

(3) Contributions to the capital and surplus of an organization; and

(4) The holding of an organization's subordinated debt when the investor and the investor's affiliates hold more than 5 percent of the equity of the organization.

(n) *Investor* means an Edge corporation, Agreement corporation, bank holding company, or member bank.

(o) *Joint venture* means an organization that has 20 percent or more of its voting shares held directly or indirectly by the investor or by an affiliate of the investor under any authority, but which is not a subsidiary of the investor.

(p) *Loans and extensions of credit* means all direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay funds.

(q) *Organization* means a corporation, government, partnership, association, or any other entity.

(r) *Person* means an individual or an organization.

(s) *Portfolio investment* means an investment in an organization other than a subsidiary or joint venture.

(t) *Representative office* means an office that:

(1) Engages solely in representational and administrative functions, such as soliciting new business or acting as liaison between the organization's head office and customers in the United States; and

(2) Does not have authority to make any business decision (other than decisions relating to the premises or personnel of the representative office) for the account of the organization it represents, including contracting for any deposit or deposit-like liability on behalf of the organization.

(u) *Strongly capitalized* means:

(1) In relation to a parent member bank, that the standards set out in 12 CFR 208.33(b)(1) are satisfied; and

(2) In relation to an Edge or Agreement corporation or a bank holding company, that it has a total risk-based capital ratio of 10.0 percent or greater.

(v) *Subsidiary* means an organization more than 50 percent of the voting shares of which is held directly or indirectly, or which is otherwise controlled or capable of being controlled, by the investor or an affiliate of the investor under any authority. Among other circumstances, an investor is considered to control an organization if the investor or an affiliate is a general partner of the organization or if the investor and its affiliates directly or indirectly own or control more than 50 percent of the equity of the organization.

(w) *Tier 1 capital* has the same meaning as provided under the Capital Adequacy Guidelines (12 CFR part 208, appendix A).

(x) *Well managed* means that the Edge or Agreement corporation, its parent member bank, if any, and the bank holding company have each received a composite rating of 1 or 2 at its most recent examination or review and are not subject to any supervisory enforcement action.

[56 FR 19565, Apr. 29, 1991, as amended at 57 FR 12997, Apr. 15, 1992; 58 FR 6358, Jan. 28, 1993; 60 FR 67054, Dec. 28, 1995]

§ 211.3 Foreign branches of U.S. banking organizations.

(a) *Establishment of foreign branches—*

(1) *Right to establish branches.* Foreign branches may be established by any member bank having capital and surplus of \$1,000,000 or more, an Edge cor-

poration, an Agreement corporation, or a subsidiary held pursuant to this subpart. Unless otherwise provided in this section, the establishment of a foreign branch requires the specific prior approval of the Board.

(2) *Branching within a foreign country.* Unless the organization has been notified otherwise, no prior Board approval is required for an organization to establish additional branches in any foreign country where it operates one or more branches.²

(3) *Branching into additional foreign countries.* After giving the Board 45 days' prior written notice, an organization that operates branches in two or more foreign countries may establish a branch in an additional foreign country, unless notified otherwise by the Board.²

(4) *Expiration of branching authority.* Authority to establish branches through prior approval or prior notice shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

(5) *Reporting.* Any organization that opens, closes, or relocates a branch shall report such change in a manner prescribed by the Board.

(b) *Further powers of foreign branches of member banks.* In addition to its general banking powers, and to the extent consistent with its charter, a foreign branch of a member bank may engage in the following activities so far as usual in connection with the business of banking in the country where it transacts business:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,³ if the guarantee or agreement specifies a maximum monetary liability; but except to the extent that the member bank is fully secured, it may

²For the purpose of this paragraph, a subsidiary other than a bank or an Edge or Agreement corporation is considered to be operating a branch in a foreign country if it has an affiliate that operates an office (other than a representative office) in that country.

³*Readily ascertainable events* include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents.

not have liabilities outstanding for any person on account of such guarantees or agreements which, when aggregated with other unsecured obligations of the same person, exceed the limit contained in paragraph (a)(1) of section 5200 of the Revised Statutes (12 U.S.C. 84) for loans and extensions of credit;

(2) *Government obligations.* Underwrite, distribute, buy, sell, and hold obligations of:

- (i) The national government of the country in which the branch is located;
- (ii) An agency or instrumentality of the national government where supported by the taxing authority, guarantee, or full faith and credit of the national government; and
- (iii) A political subdivision of the country;

Provided however that, no member bank may hold, or be under commitment with respect to, such obligations for its own account in an aggregate amount exceeding the greater of:

- (A) 10 percent of its Tier 1 capital; or
- (B) 10 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or the date of acquisition of the branch in the case of a branch that has not been so reported);

(3) *Other Investments.* Invest in:

(i) The securities of the central bank, clearing houses, governmental entities other than those authorized under paragraph (b)(2) of this section, and government-sponsored development banks of the country in which the foreign branch is located;

(ii) Other debt securities eligible to meet local reserve or similar requirements; and

(iii) Shares of automated electronic payments networks, professional societies, schools, and the like necessary to the business of the branch;

Provided however that, the total investments of the bank's branches in that country under this paragraph (exclusive of securities held as required by the law of that country or as authorized under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh)) may not exceed 1 percent of the total deposits of the bank's branches in that country on the preceding year-end call report date (or on the date of acquisition

of the branch in the case of a branch that has not so reported);

(4) *Credit extensions to bank's officers.* Extend credit to an officer of the bank residing in the country in which the foreign branch is located to finance the acquisition or construction of living quarters to be used as the officer's residence abroad, provided however that:

(i) The credit extension is reported promptly to the branch's home office; and

(ii) Any extension of credit exceeding \$100,000 (or the equivalent in local currency) is reported also to the bank's board of directors;

(5) *Real estate loans.* Take liens or other encumbrances on foreign real estate in connection with its extensions of credit, whether or not of first priority and whether or not the real estate has been improved;

(6) *Insurance.* Act as insurance agent or broker;

(7) *Employee benefits program.* Pay to an employee of the branch, as part of an employee benefits program, a greater rate of interest than that paid to other depositors of the branch;

(8) *Repurchase agreements.* Engage in repurchase agreements involving securities and commodities that are the functional equivalents of extensions of credit;

(9) *Investment in subsidiaries.* With the Board's prior approval, acquire all of the shares of a company (except where local law requires other investors to hold directors' qualifying shares or similar types of instruments) that engages solely in activities:

(i) In which the member bank is permitted to engage; or

(ii) That are incidental to the activities of the foreign branch; and

(10) *Other activities.* With the Board's prior approval, engage in other activities that the Board determines are usual in connection with the transaction of the business of banking in the places where the member bank's branches transact business.

(c) *Reserves of foreign branches of member banks.* Member banks shall maintain reserves against foreign branch deposits when required by part 204 of this chapter (Regulation D).

§211.4 Edge and Agreement corporations.

(a) *Organization*—(1) *Board authority.* The Board shall have the authority to approve:

(i) The establishment of Edge corporations; and

(ii) Investments by member banks and bank holding companies in Agreement corporations.

(2) *Permit.* A proposed Edge corporation shall become a body corporate when the Board issues a permit approving its proposed name, articles of association, and organization certificate.

(3) *Name.* The name shall include *international, foreign, overseas*, or some similar word, but may not resemble the name of another organization to an extent that might mislead or deceive the public.

(4) *FEDERAL REGISTER notice.* The Board shall publish in the FEDERAL REGISTER notice of any proposal to organize an Edge corporation and will give interested persons an opportunity to express their views on the proposal.

(5) *Factors considered by the Board.* The factors considered by the Board in acting on a proposal to organize an Edge corporation include:

(i) The financial condition and history of the applicant;

(ii) The general character of its management;

(iii) The convenience and needs of the community to be served with respect to international banking and financing services; and

(iv) The effects of the proposal on competition.

(6) *Authority to commence business.* (i) After the Board issues a permit, the Edge corporation may elect officers and otherwise complete its organization, invest in obligations of the United States Government, and maintain deposits with depository institutions, but it may not exercise any other powers until at least 25 percent of the authorized capital stock specified in the articles of association has been paid in cash, and each shareholder has paid in cash at least 25 percent of that shareholder's stock subscription.

(ii) Unexercised authority to commence business as an Edge corporation shall expire one year after issuance of

the permit, unless the Board extends the period.

(7) *Amendments to articles of association.* No amendment to the articles of association shall become effective until approved by the Board.

(8) *Shareholders meeting.* An Edge Corporation shall provide in its bylaws that:

(i) A shareholders meeting shall be convened at the request of the Board within five days after the Board gives notice of the request to the Edge corporation;

(ii) Any shareholder or group of shareholders that owns or controls 25 percent or more of the shares of the Edge corporation shall attend such a meeting in person or by proxy; and

(iii) Failure by a shareholder or authorized representative to attend any such meeting in person or by proxy may result in removal or barring of such shareholders or any representatives from further participation in the management or affairs of the Edge corporation.

(b) *Nature and ownership of shares*—(1) *Shares.* (i) Shares of stock in an Edge corporation may not include no-par value shares and shall be issued and transferred only on its books and in compliance with section 25(a) of the FRA and this subpart.

(ii) The share certificates of an Edge corporation shall:

(A) Name and describe each class of shares indicating its character and any unusual attributes such as preferred status or lack of voting rights; and

(B) Conspicuously set forth the substance of:

(1) Any limitations upon the rights of ownership and transfer of shares imposed by section 25(a) of the FRA; and

(2) Any rules that the Edge corporation prescribes in its by-laws to ensure compliance with this paragraph.

(iii) Any change in status of a shareholder that causes a violation of section 25(a) of the FRA shall be reported to the Board as soon as possible, and the Edge corporation shall take such action as the Board may direct.

(2) *Ownership of Edge corporations by foreign institutions*—(i) *Prior Board approval.* One or more foreign or foreign-controlled domestic institutions referred to in paragraph 13 of section

25(a) of the FRA (12 U.S.C. 619) may apply for the Board's prior approval to acquire directly or indirectly a majority of the shares of the capital stock of an Edge corporation.

(ii) *Conditions and requirements.* Such an institution shall:

(A) Provide the Board information related to its financial condition and activities and such other information as the Board may require;

(B) Ensure that any transaction by an Edge corporation with an affiliate⁴ is on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions by the Edge corporation with nonaffiliated persons, and does not involve more than the normal risk of repayment or present other unfavorable features;

(C) Ensure that the Edge corporation will not provide funding on a continual or substantial basis to any affiliate or office of the foreign institution through transactions that would be inconsistent with the international and foreign business purposes for which Edge corporations are organized;

(D) Invest no more than 10 percent of the institution's capital and surplus in the aggregate amount of stock held in all Edge corporations; and

(E) In the case of a foreign institution not subject to section 4 of the BHC Act:

(1) Comply with any conditions that the Board may impose that are necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States; and

(2) Give the Board 45 days' prior written notice, in a form to be prescribed by the Board, before engaging in any nonbanking activity in the United States, or making any initial or additional investments in another organization, that would require prior Board approval or notice by an organization subject to section 4 of the BHC Act; in connection with such notice, the Board may impose conditions necessary to

prevent adverse effects that may result from such activity or investment.

(3) *Change in control—(i) Prior notice.* Any person shall give the Board 60 days' prior written notice, in a form to be prescribed by the Board, before acquiring, directly or indirectly, 25 percent or more of the voting shares, or otherwise acquiring control, of an Edge corporation. The Board may extend the 60-day period for an additional 30 days by notifying the acquiring party. A notice under this paragraph need not be filed where a change in control is effected through a transaction requiring the Board's approval under section 3 of the BHC Act (12 U.S.C. 1842).

(ii) *Board review.* In reviewing a notice filed under this paragraph, the Board shall consider the factors set forth in paragraph (a)(5) of this section and may disapprove a notice or impose any conditions that it finds necessary to assure the safe and sound operation of the Edge corporation, to assure the international character of its operation, and to prevent adverse effects such as decreased or unfair competition, conflicts of interest, or undue concentration of resources.

(c) *Domestic branches—(1) Prior notice.* (i) An Edge corporation may establish branches in the United States 45 days after the Edge corporation has given notice to its Reserve Bank, unless the Edge corporation is notified to the contrary within that time.

(ii) The notice to the Reserve Bank shall include a copy of the notice of the proposal published in a newspaper of general circulation in the communities to be served by the branch.

(iii) The newspaper notice may appear no earlier than 90 calendar days prior to submission of notice of the proposal to the Reserve Bank. The newspaper notice must provide an opportunity for the public to give written comment on the proposal to the appropriate Reserve Bank for at least 30 days after the date of publication.

(2) *Factors considered.* The factors considered in acting upon a proposal to establish a branch are enumerated in paragraph (a)(5) of this section.

(3) *Expiration of authority.* Authority to open a branch under prior notice shall expire one year from the earliest date on which that authority could

⁴For purposes of this paragraph, *affiliate* means any organization that would be an *affiliate* under section 23A of the FRA (12 U.S.C. 371c) if the Edge corporation were a member bank.

have been exercised, unless the Board extends the period.

(d) *Reserve requirements and interest rate limitations.* The deposits of an Edge or Agreement corporation are subject to parts 204 and 217 of this chapter (Regulations D and Q) in the same manner and to the same extent as if the Edge or Agreement corporation were a member bank.

(e) *Permissible activities in the United States.* An Edge corporation may engage directly or indirectly in activities in the United States that are permitted by the sixth paragraph of section 25(a) of the FRA and are incidental to international or foreign business, and in such other activities as the Board determines are incidental to international or foreign business. The following activities will ordinarily be considered incidental to an Edge corporation's international or foreign business:

(1) *Deposit activities*—(i) *Deposits from foreign governments and foreign persons.* An Edge corporation may receive in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposits) from foreign governments and their agencies and instrumentalities, and from foreign persons.

(ii) *Deposits from other persons.* An Edge corporation may receive from any other person in the United States transaction accounts, savings, and time deposits (including issuing negotiable certificates of deposit) if such deposits:

(A) Are to be transmitted abroad;

(B) Consist of funds to be used for payment of obligations to the Edge corporation or collateral securing such obligations;

(C) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(D) Consist of the proceeds of extensions of credit by the Edge corporation;

(E) Represent compensation to the Edge corporation for extensions of credit or services to the customer;

(F) Are received from Edge or Agreement corporations, foreign banks and

other depository institutions (as described in part 204 of this chapter (Regulation D));

(G) Are received from an organization that by its charter, license, or enabling law is limited to business that is of an international character, including Foreign Sales Corporations (26 U.S.C. 921); transportation organizations engaged exclusively in the international transportation of passengers or in the movement of goods, wares, commodities or merchandise in international or foreign commerce; and export trading companies that are exclusively engaged in activities related to international trade.

(2) *Liquid funds.* Funds of an Edge or Agreement corporation that are not currently employed in its international or foreign business, if held or invested in the United States, shall be in the form of:

(i) Cash;

(ii) Deposits with depository institutions, as described in part 204 of this chapter (Regulation D), and other Edge and Agreement corporations;

(iii) Money market instruments (including repurchase agreements with respect to such instruments), such as bankers' acceptances, federal funds sold, and commercial paper; and

(iv) Short- or long-term obligations of, or fully guaranteed by, federal, state, and local governments and their instrumentalities.

(3) *Borrowings.* An Edge corporation may:

(i) Borrow from offices of other Edge and Agreement corporations, foreign banks, and depository institutions (as described in part 204 of this chapter (Regulation D)) or issue obligations to the United States or any of its agencies or instrumentalities;

(ii) Incur indebtedness from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof that the Edge corporation is obligated to repurchase;

(iii) Issue long-term subordinated debt that does not qualify as a *deposit* under part 204 of this chapter (Regulation D).

(4) *Credit activities.* An Edge corporation may:

(i) Finance the following:

(A) Contracts, projects, or activities performed substantially abroad;

(B) The importation into or exportation from the United States of goods, whether direct or through brokers or other intermediaries;

(C) The domestic shipment or temporary storage of goods being imported or exported (or accumulated for export); and

(D) The assembly or repackaging of goods imported or to be exported;

(ii) Finance the costs of production of goods and services for which export orders have been received or which are identifiable as being directly for export;

(iii) Assume or acquire participations in extensions of credit, or acquire obligations arising from transactions the Edge corporation could have financed, including acquisitions of obligations of foreign governments;

(iv) Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events,⁵ if the guarantee or agreement specifies the maximum monetary liability thereunder and is related to a type of transaction described in paragraphs (e)(4)(i) and (ii) of this section; and

(v) Provide credit and other banking services for domestic and foreign purposes to foreign governments and their agencies and instrumentalities; foreign persons; and organizations of the type described in paragraph 211.4(e)(1)(ii)(G) of this section.

(5) *Payments and collections.* An Edge corporation may receive checks, bills, drafts, acceptances, notes, bonds, coupons, and other instruments for collection abroad, and collect such instruments in the United States for a customer abroad; and may transmit and receive wire transfers of funds and securities for depositors.

(6) *Foreign exchange.* An Edge corporation may engage in foreign exchange activities.

(7) *Fiduciary and investment advisory activities.* An Edge corporation may:

(i) Hold securities in safekeeping for, or buy and sell securities upon the order and for the account and risk of, a person, provided such services for U.S. persons shall be with respect to foreign securities only;

(ii) Act as paying agent for securities issued by foreign governments or other entities organized under foreign law;

(iii) Act as trustee, registrar, conversion agent, or paying agent with respect to any class of securities issued to finance foreign activities and distributed solely outside the United States;

(iv) Make private placements of participations in its investments and extensions of credit; however, except to the extent permissible for member banks under section 5136 of the Revised Statutes (12 U.S.C. 24, Seventh), no Edge corporation may otherwise engage in the business of underwriting, distributing, or buying or selling securities in the United States;

(v) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interests and other investment assets,⁶ and by providing advice on mergers and acquisitions, provided such services for U.S. persons shall be with respect to foreign assets only; and

(vi) Provide general economic information and advice, general economic statistical forecasting services and industry studies, provided such services for U.S. persons shall be with respect to foreign economies and industries only.

(8) *Banking services for employees.* Provide banking services, including deposit services, to the officers and employees of the Edge corporation and its affiliates; however, extensions of credit to such persons shall be subject to the restrictions of part 215 of this chapter (Regulation O) as if the Edge corporation were a member bank.

(9) *Other activities.* With the Board's prior approval, engage in other activities in the United States that the

⁵ *Readily ascertainable events* include, but are not limited to, events such as nonpayment of taxes, rentals, customs duties, or cost of transport and loss or nonconformance of shipping documents.

⁶ For purposes of this section, management of an investment portfolio does not include operational management of real property, or industrial or commercial assets.

Board determines are incidental to the international or foreign business of Edge corporations.

(f) *Agreement corporations.* With the prior approval of the Board, a member bank or bank holding company may invest in a federally- or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

§211.5 Investments and activities abroad.

(a) *General policy.* Activities abroad, whether conducted directly or indirectly, shall be confined to activities of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) *Investment requirements*—(1) *Eligible investments.* Subject to the limitations in paragraph (b)(2) of this section, an investor may directly or indirectly:

(i) Invest in a subsidiary that engages solely in activities listed in paragraph (d) of this section or in such other activities as the Board has determined in the circumstances of a particular case are permissible; provided however that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than 5 percent of either the consolidated assets or revenues of the acquired organization;

(ii) Invest in a joint venture provided that, unless otherwise permitted by the Board, not more than 10 percent of the joint venture's consolidated assets or revenues are attributable to activities not listed in paragraph (d) of this section; and

(iii) Make portfolio investments in an organization, provided however that:

(A) The total direct and indirect portfolio investments by the investor and its affiliates in organizations engaged in activities that are not permissible for joint ventures do not exceed:

(1) 40 percent of the total equity of the organization, when combined with shares in the organization held in trading or dealing accounts pursuant to paragraph (d)(14) of this section and shares in the organization held under any other authority; or

(2) 25 percent of the investor's Tier 1 capital where the investor is a bank holding company or 100 percent of Tier 1 capital for any other investor, when combined with underwriting commitments and shares held in trading or dealing accounts pursuant to paragraph (d)(14) of this section;⁷ and

(B) Any loans and extensions of credit made by an investor or its affiliates to the organization are on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the investor or its affiliates and nonaffiliated persons.

(2) *Direct investments by member banks.* A member bank's direct investments under section 25 of the FRA shall be limited to:

(i) Foreign banks;

(ii) Foreign organizations formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank; and

(iii) Subsidiaries established pursuant to §211.3(b)(9) of this subpart.

(3) *Investment limit.* In computing the amount that may be invested in any organization under this section, there shall be included any unpaid amount for which the investor is liable and any investments in the same organization held by affiliates under any authority.

(4) *Divestiture.* An investor shall dispose of an investment promptly (unless the Board authorizes retention) if:

(i) The organization invested in:

⁷For this purpose, a direct subsidiary of a member bank is deemed to be an investor.

Federal Reserve System

§ 211.5

(A) Engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States;

(B) Engages directly or indirectly in other business in the United States that is not permitted to an Edge corporation in the United States except that an investor may hold up to 5 percent of the shares of a foreign company that engages directly or indirectly in business in the United States that is not permitted to an Edge corporation; or

(C) Engages in impermissible activities to an extent not permitted under paragraph (b)(1) of this section; or

(ii) After notice and opportunity for hearing, the investor is advised by the Board that its investment is inappropriate under the FRA, the BHC Act, or this subpart.

(c) *Investment procedures.*⁸ Direct and indirect investments shall be made in accordance with the general consent, prior notice, or specific consent procedures contained in this paragraph. Except as the Board may otherwise determine, in order for an investor to make investments under the general consent procedure, the investor and any other investor of which it is a subsidiary shall be in compliance with applicable minimum standards for capital adequacy. The Board may at any time, upon notice, modify or suspend the general consent and prior notice procedures with respect to any investor or with respect to the acquisition of shares of organizations engaged in particular kinds of activities. An investor shall apply for and receive the prior specific consent of the Board for its initial investment in its first subsidiary or joint venture unless an affiliate has made such an investment. Authority to make investments under prior notice or specific consent shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

⁸When necessary, the general consent and prior notice provisions of this section constitute the Board's approval under the eighth paragraph of section 25(a) of the FRA for investments in excess of the limitations therein based on capital and surplus.

(1) *General consent.* Subject to the other limitations of this section, the Board grants its general consent for the following:⁹

(i) Any investment in a joint venture or subsidiary, and any portfolio investment, if the total amount invested (in one transaction or in a series of transactions) does not exceed the lesser of:

(A) \$25 million; or

(B) 5 percent of the investor's Tier 1 capital in the case of a member bank, bank holding company, or Edge corporation engaged in banking, or 25 percent of the investor's Tier 1 capital in the case of an Edge corporation not engaged in banking;

(ii) Any additional investment in an organization in any calendar year so long as:

(A) The total amount invested in that calendar year does not exceed 10 percent of the investor's Tier 1 capital; and

(B) The total amount invested under § 211.5 (including investments made pursuant to specific consent or prior notice) in that calendar year does not exceed cash dividends reinvested under paragraph (c)(1)(iii) of this section plus 10 percent of the investor's direct and indirect historical cost¹⁰ in the organization, which investment authority, to the extent unexercised, may be carried

⁹In determining compliance with these limits, an investor shall combine the value of all shares of an organization held in trading or dealing accounts under § 211.5(d)(14) of this part with investments in the same organization. Shares held in trading or dealing accounts are also subject to the limits in § 211.5(d)(14) of this part.

¹⁰The *historical cost* of an investment consists of the actual amounts paid for shares or otherwise contributed to the capital accounts, as measured in dollars at the exchange rate in effect at the time each investment was made. It does not include subordinated debt or unpaid commitments to invest even though these may be considered investments for other purposes of this part. For investments acquired indirectly as a result of acquiring a subsidiary, the historical cost to the investor is measured as of the date of acquisition of the subsidiary at the net asset value of the equity interest in the case of subsidiaries and joint ventures, and in the case of portfolio investments, at the book carrying value.

forward and accumulated for up to five consecutive years;

(iii) Any additional investment in an organization in an amount equal to cash dividends received from that organization during the preceding twelve calendar months; or

(iv) Any investment that is acquired from an affiliate at net asset value.

(2)(i) *Expanded general consent for de novo investments.* Notwithstanding the amount limitations of paragraph (c)(1) of this section, but subject to the other limitations of this section, the Board grants expanded general consent authority for investments in an organization by an investor that is strongly capitalized and well managed if:

(A) The activities of the organization are limited to activities in which a national bank may engage directly or in which a subsidiary may engage under paragraph (d) of this section;

(B) In the case of an investor that is an Edge corporation that is not engaged in banking or an Agreement corporation, the total amount invested in such organization (in one transaction or a series of transactions) does not exceed the lesser of 20 percent of the investor's Tier 1 capital or 2 percent of the Tier 1 capital of the parent member bank;

(C) In the case of a bank holding company or member bank investor, the total amount invested in such organization (in one transaction or a series of transactions) directly or indirectly does not exceed 2 percent of the investor's Tier 1 capital;

(D) All investments made, directly or indirectly, by an Edge corporation not engaged in banking or an Agreement corporation during the previous 12-month period under paragraph (c)(2) of this section, when aggregated with the proposed investment, would not exceed the lesser of 50 percent of the total capital of the Edge or Agreement corporation, or 5 percent of the total capital of the parent member bank;

(E) All investments made, directly or indirectly, by a member bank or a bank holding company during the previous 12-month period under paragraph (c)(2) of this section, when aggregated with the proposed investment, would not exceed 5 percent of its total capital; and

(F) Both before and immediately after the proposed investment the investor, its parent member bank, if any, and any parent bank holding company are strongly capitalized and well managed.

(ii) *Determining aggregate investment limits.* For purposes of determining compliance with the aggregate investment limits set out in paragraphs (c)(2)(i)(D) and (E) of this section, an investment by an investor in a subsidiary shall be counted only once notwithstanding that such subsidiary may, within 12 months of the date of making the investment, downstream all or any part of such investment to another subsidiary.

(iii) *Additional investments.* An investor that makes investments under paragraph (c)(2)(i) of this section may also make additional investments in an organization under the standards set forth in paragraphs (c)(1)(ii), (c)(1)(iii) and (c)(1)(iv) of this section.

(iv) *Ineligible investments.* The following investments are not eligible for the general consent under paragraph (c)(2)(i) of this section:

(A) An investment in a foreign country where the investor does not have an affiliate or a branch;

(B) The establishment or acquisition of an initial subsidiary bank in a foreign country;

(C) Investments in general partnerships or unlimited liability companies; and

(D) An acquisition of shares or assets of an organization that is not an affiliate or joint venture of the investor.

(v) *Post-investment notice.* By the end of the month following the month in which the investment is made, the investor shall provide the Board with the following information relating to the investment:

(A) If the investment is in a joint venture, the respective responsibilities of the parties to the joint venture;

(B) Projections for the organization in which the investment is made for the first year following the investment; and

(C) Where the investment is made in an organization that incurred a loss in the last year, a description of the reasons for the loss and the steps taken to address the problem.

(3) *Prior notice.* An investment that does not qualify under the general consent procedure may be made after the investor has given 45 days' prior written notice to the Board. The Board may waive the 45-day period if it finds immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is received. The Board may suspend the period or act on the investment under the Board's specific consent procedures.

(4) *Specific consent.* Any investment that does not qualify for either the general consent or the prior notice procedure shall not be consummated without the specific consent of the Board.

(d) *Permissible activities.* The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad:

(1) Commercial and other banking activities;

(2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring;

(3) Leasing real or personal property, or acting as agent, broker, or advisor in leasing real or personal property, if the lease serves as the functional equivalent of an extension of credit to the lessee of the property;

(4) Acting as fiduciary;

(5) Underwriting credit life insurance and credit accident and health insurance;

(6) Performing services for other direct or indirect operations of a U.S. banking organization, including representative functions, sale of long-term debt, name saving, holding assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible domestically for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the BHC Act;

(7) Holding the premises of a branch of an Edge corporation or member bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or subsidiary;

(8) Providing investment, financial, or economic advisory services;

(9) General insurance agency and brokerage;

(10) Data processing;

(11) Organizing, sponsoring, and managing a mutual fund if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise managerial control over the firms in which it invests;

(12) Performing management consulting services provided that such services when rendered with respect to the U.S. market shall be restricted to the initial entry;

(13) Underwriting, distributing and dealing in debt securities outside the United States;

(14) Underwriting, distributing, and dealing in equity securities outside the United States as follows:

(i) By an investor, or an affiliate, that had commenced such activities prior to March 27, 1991, and subject to limitations in effect at that time (12 CFR part 211 (1990)); or

(ii) With the approval of the Board, underwriting equity securities if:

(A) Commitments by an investor and its affiliates for the shares of an organization do not in the aggregate exceed the lesser of \$60 million or 25 percent of the investor's Tier 1 capital unless the underwriter is covered by binding commitments from subunderwriters or other purchasers obtained by the investor or its affiliates; and

(B) Commitments by an investor and its affiliates for the shares of an organization in excess of those permitted by paragraph (d)(14)(ii)(A) of this section provided that:

(1) The underwriting level approved by the Board for the investor and its affiliates in excess of the limitations of paragraph (d)(14)(ii)(A) of this section is fully deducted from the capital of the bank holding company, and from the capital of the bank where the securities activities are conducted by a subsidiary of a U.S. bank;¹¹ and

(2) In the Board's judgment such bank holding company and bank would remain strongly capitalized after such deduction from capital; and

(iii) With the approval of the Board, dealing in the shares of an organization

¹¹Fifty percent of such capital deductions shall be from Tier 1 capital.

(including the shares of a U.S. organization with respect to foreign persons only and subject to the limitations on owning or controlling shares of a company in section 4 of the BHC Act and the Board's Regulation Y (12 CFR part 225)) where the shares held in the trading or dealing accounts of an investor and its affiliates, when combined with any shares held pursuant to the authority provided under paragraph (b) of this section, do not in the aggregate exceed the lesser of \$30 million or 10 percent of the investor's Tier 1 capital, provided however that:

(A) For purposes of determining compliance with the limitations of this paragraph (d)(14)(iii) and paragraph (b)(1)(iii)(A)(2) of this section, long and short positions in the same security may be netted and positions in a security may be offset by futures, forwards, options, and similar instruments referenced to the same security through hedging methods approved by the Board, except that any position in a security shall not be deemed to have been reduced by more than 75 percent;

(B) Any shares held in trading or dealing accounts for longer than 90 days shall be reported to the senior management of the investor;

(C) Any shares acquired pursuant to an underwriting commitment for up to 90 days after the payment date for such underwriting shall not be subject to the dollar and percentage limitations of paragraph (d)(14)(iii) of this section or the investment provisions of paragraph (b) of this section, other than the aggregate limits in paragraph (b)(1)(iii)(A)(2) of this section; and

(D) Shares of an organization held in all trading and dealing accounts, when combined with all other equity interests in the organization held by the investor and its affiliates, other than underwriting commitments for shares and shares held pursuant to an underwriting for 90 days following the payment date for such shares, must conform to the permissible limits for investments in an organization under paragraph (b) of this section.¹²

¹² Underwriting commitments are combined with shares held by an investor and its affiliates (other than an affiliate authorized to deal in shares under section 4(c)(8) of the BHC Act) in dealing or trading accounts and

(iv) Underwriting commitments for shares and shares held by an affiliate authorized to underwrite equity securities under section 4(c)(8) of the BHC Act shall not be included in determining compliance with the aggregate limits in paragraph (b)(1)(iii)(A)(2) of this section and the limits of paragraphs (d)(14)(ii)(A) and (iii) of this section, except that shares held by such an affiliate shall be included for purposes of determining compliance with paragraph (d)(14)(iii)(D) of this section.

(15) Operating a travel agency provided that the travel agency is operated in connection with financial services offered abroad by the investor or others;

(16) Underwriting life, annuity, pension fund-related, and other types of insurance, where the associated risks have been previously determined by the Board to be actuarially predictable, provided however that:

(i) Investments in, and loans and extensions of credit (other than loans and extensions of credit fully secured in accordance with the requirements of section 23A of the FRA (12 U.S.C. 371c) or with such other standards as the Board may require) to, the company by the investor or its affiliates are deducted from the capital of the investor;¹³ and

(ii) Activities conducted directly or indirectly by a subsidiary of a U.S. insured bank are excluded from the authority of this paragraph.

(17) Acting as a futures commission merchant for financial instruments of the type, and on exchanges, that the Board has previously approved, provided however that:

(i) Activities are conducted in accordance with the standards set forth in § 225.25(b)(18) of the Board's Regulation Y (12 CFR 225.25(b)(18)); and

(ii) Prior approval must be obtained for activities conducted on an exchange that requires members to guarantee or otherwise contract to cover losses suffered by other members.

with portfolio investments for purposes of determining compliance with the aggregate limits in paragraph (b)(1)(iii)(A)(2) of this section.

¹³ Fifty percent of such capital deduction shall be from Tier 1 capital.

(18) Acting as principal or agent in swap transactions¹⁴ subject to any limitations applicable to state member banks under the Board's Regulation H (12 CFR part 208), except that where such activities involve contracts related to a commodity, such contracts must provide an option for cash settlement and the option must be exercised upon settlement.

(19) Engaging in activities that the Board has determined in Regulation Y (12 CFR 225.25(b)) are closely related to banking under section 4(c)(8) of the BHC Act; and

(20) With the Board's specific approval, engaging in other activities that the Board determines are usual in connection with the transaction of the business of banking or other financial operations abroad and are consistent with the FRA or the BHC Act.

(e) *Debts previously contracted.* Shares or other ownership interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this section; however, they shall be disposed of promptly but in no event later than two years after their acquisition, unless the Board authorizes retention for a longer period.

(f) *Investments made through debt-for-equity conversions—(1) Permissible investments.* A bank holding company may make investments through the conversion of sovereign or private debt obligations of an eligible country, either through direct exchange of the debt obligations for the investment or by a payment for the debt in local currency, the proceeds of which, including an additional cash investment not exceeding in the aggregate more than 10 percent of the fair value of the debt obligations being converted as part of such investment, are used to purchase the following investments:

(i) *Public sector companies.* A bank holding company may acquire up to and including 100 percent of the shares of (or other ownership interests in) any foreign company located in an eligible country if the shares are acquired from the government of the eligible country

or from its agencies or instrumentalities.

(ii) *Private sector companies.* A bank holding company may acquire up to and including 40 percent of the shares, including voting shares, of (or other ownership interests in) any other foreign company located in an eligible country subject to the following conditions:

(A) A bank holding company may acquire more than 25 percent of the voting shares of the foreign company only if another shareholder or control group of shareholders unaffiliated with the bank holding company holds a larger block of voting shares of the company;

(B) The bank holding company and its affiliates may not lend or otherwise extend credit to the foreign company in amounts greater than 50 percent of the total loans and extensions of credit to the foreign company; and

(C) The bank holding company's representation on the board of directors or on management committees of the foreign company may be no more than proportional to its shareholding in the foreign company.

(2) *Investments by bank subsidiary of bank holding company.* Upon application, the Board may permit an indirect investment to be made pursuant to this paragraph through an insured bank subsidiary of the bank holding company where the bank holding company demonstrates that such ownership is consistent with the purposes of the FRA. In granting its consent, the Board may impose such conditions as it deems necessary or appropriate to prevent adverse effects, including prohibiting loans from the bank to the company in which the investment is made.

(3) *Divestiture—(i) Time limits for divestiture.* The bank holding company shall divest the shares of, or other ownership interests in, any company acquired pursuant to this paragraph (unless the retention of the shares or other ownership interest is otherwise permissible at the time required for divestiture) within the longer of:

(A) Ten years from the date of acquisition of the investment except that the Board may extend such period if, in

¹⁴Swap transactions involving equity instruments are separately authorized under paragraph (d)(14) of this section.

the Board's judgment, such an extension would not be detrimental to the public interest; or

(B) Two years from the date on which the bank holding company is permitted to repatriate in full the investment in the foreign company;

Provided however that, in either event divestiture occurs within fifteen years of the date of the acquisition.

(ii) *Report to the Board.* The bank holding company shall report to the Board on its plans for divesting an investment made under this paragraph two years prior to the final date for divestiture, in a manner to be prescribed by the Board.

(iii) *Other conditions requiring divestiture.* All investments made pursuant to this paragraph are subject to paragraphs (b)(4)(i)(A) and (B) of this section requiring prompt divestiture (unless the Board upon application authorizes retention) if the company invested in engages in impermissible business in the United States that exceeds in the aggregate 10 percent of the company's consolidated assets or revenues calculated on an annual basis; provided however that, such company may not engage in activities in the United States that consist of banking or financial operations (as defined in § 211.23(f)(5)(iii)(B) of this chapter), or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act, except under regulations of the Board or with the prior approval of the Board.

(4) *Investment procedures—(i) General consent.* Subject to the other limitations of this paragraph, the Board grants its general consent for investments made under this paragraph if the total amount invested does not exceed the greater of \$25 million or 1 percent of the Tier 1 capital of the investor.

(ii) All other investments shall be made in accordance with the procedures of paragraph (c) of this section requiring prior notice or specific consent.

(5) *Conditions—(i) Name.* Any company acquired pursuant to this paragraph shall not bear a name similar to the name of the acquiring bank holding company or any of its affiliates.

(ii) *Confidentiality.* Neither the bank holding company nor its affiliates shall

provide to any company acquired pursuant to this paragraph any confidential business information or other information concerning customers that are engaged in the same or related lines of business as the company.

§ 211.6 Lending limits and capital requirements.

(a) *Acceptances of Edge corporations—(1) Limitations.* An Edge corporation shall be and remain fully secured for:

(i) All acceptances outstanding in excess of 200 percent of its Tier 1 capital; and

(ii) All acceptances outstanding for any one person in excess of 10 percent of its Tier 1 capital; *Provided however that*, these limitations apply only to acceptances of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372).

(2) *Exceptions.* These limitations do not apply if the excess represents the international shipment of goods and the Edge corporation is:

(i) Fully covered by primary obligations to reimburse it that are guaranteed by banks or bankers; or

(ii) Covered by participation agreements from other banks, as such agreements are described in § 250.165 of this chapter.

(b) *Loans and extensions of credit to one person—(1) Limitations.* Except as the Board may otherwise specify:

(i) The total loans and extensions of credit outstanding to any person by an Edge corporation engaged in banking and its direct or indirect subsidiaries may not exceed 15 percent of the Edge corporation's Tier 1 capital;¹⁵ and

(ii) The total loans and extensions of credit to any person by a foreign bank or Edge corporation subsidiary of a member bank, and by majority-owned subsidiaries of a foreign bank or Edge corporation, when combined with the total loans and extensions of credit to the same person by the member bank and its majority-owned subsidiaries, may not exceed the member bank's limitation on loans and extensions of credit to one person.

¹⁵For purposes of this subsection, *subsidiary* includes subsidiaries controlled by the Edge corporation but does not include companies otherwise controlled by affiliates of the Edge corporation.

(2) *Loans and extensions of credit* has the meaning set forth in § 211.2(p) of this part¹⁶ and, for purposes of this paragraph, include:

(i) Acceptances outstanding that are not of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372);

(ii) Any liability of the lender to advance funds to or on behalf of a person pursuant to a guarantee, standby letter of credit, or similar agreements;

(iii) Investments in the securities of another organization except where the organization is a subsidiary; and

(iv) Any underwriting commitments to an issuer of securities where no binding commitments have been secured from subunderwriters or other purchasers.

(3) *Exceptions.* The limitations of paragraph (b)(1) of this section do not apply to:

(i) Deposits with banks and federal funds sold;

(ii) Bills or drafts drawn in good faith against actual goods and on which two or more unrelated parties are liable;

(iii) Any bankers' acceptance of the kind described in paragraph 7 of section 13 of the FRA that is issued and outstanding;

(iv) Obligations to the extent secured by cash collateral or by bonds, notes, certificates of indebtedness, or Treasury bills of the United States;

(v) Loans and extensions of credit that are covered by bona fide participation agreements; or

(vi) Obligations to the extent supported by the full faith and credit of the following:

(A) The United States or any of its departments, agencies, establishments, or wholly-owned corporations (including obligations to the extent insured against foreign political and credit

risks by the Export-Import Bank of the United States or the Foreign Credit Insurance Association), the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association, the Inter-American Development Bank, the African Development Bank, the Asian Development Bank, or the European Bank for Reconstruction and Development;

(B) Any organization if at least 25 percent of such an obligation or of the total credit is also supported by the full faith and credit of, or participated in by, any institution designated in paragraph (b)(3)(vi)(A) of this section in such manner that default to the lender will necessarily include default to that entity. The total loans and extensions of credit under this paragraph (b)(3)(vi)(B) to any person shall at no time exceed 100 percent of the Tier 1 capital of the Edge corporation.

(c) *Capitalization.* An Edge corporation shall at all times be capitalized in an amount that is adequate in relation to the scope and character of its activities. In the case of an Edge corporation engaged in banking, after December 31, 1992, its minimum ratio of qualifying total capital to weighted-risk assets, as determined under the Capital Adequacy Guidelines, shall not be less than 10 percent, of which at least 50 percent shall consist of Tier 1 capital; provided however that for purposes of this paragraph, no limitation shall apply as to the inclusion of subordinated debt that qualifies as Tier 2 capital under the Capital Adequacy Guidelines.

§ 211.7 Supervision and reporting.

(a) *Supervision*—(1) *Foreign branches and subsidiaries.* Organizations conducting international banking operations under this subpart shall supervise and administer their foreign branches and subsidiaries in such a manner as to ensure that their operations conform to high standards of banking and financial prudence. Effective systems of records, controls, and reports shall be maintained to keep management informed of their activities and condition. Such systems shall provide, in particular, information on risk assets, liquidity management, operations, internal controls, and conformance to

¹⁶In the case of a foreign government, these include loans and extensions of credit to the foreign government's departments or agencies deriving their current funds principally from general tax revenues. In the case of a partnership or firm, these include loans and extensions of credit to its members and, in the case of a corporation, these include loans and extensions of credit to the corporation's affiliates where the affiliate incurs the liability for the benefit of the corporation.

management policies. Reports on risk assets shall be sufficient to permit an appraisal of credit quality and assessment of exposure to loss, and for this purpose provide full information on the condition of material borrowers. Reports on the operations and controls shall include internal and external audits of the branch or subsidiary.

(2) *Joint ventures.* Investors shall maintain sufficient information with respect to joint ventures to keep informed of their activities and condition. Such information shall include audits and other reports on financial performance, risk exposure, management policies, operations, and controls. Complete information shall be maintained on all transactions with the joint venture by the investor and its affiliates.

(3) *Availability of reports to examiners.* The reports and information specified in paragraphs (a)(1) and (2) of this section shall be made available to examiners of the appropriate bank supervisory agencies.

(b) *Examinations.* Examiners appointed by the Board shall examine each Edge corporation once a year. An Edge corporation shall make available to examiners sufficient information to assess its condition and operations and the condition and activities of any organization whose shares it holds.

(c) *Reports—(1) Reports of condition.* Each Edge corporation shall make reports of condition to the Board at such times and in such form as the Board may prescribe. The Board may require that statements of condition or other reports be published or made available for public inspection.

(2) *Foreign operations.* Edge and Agreement corporations, member banks, and bank holding companies shall file such reports on their foreign operations as the Board may require.

(3) *Acquisition or disposition of shares.* A member bank, Edge or Agreement corporation or a bank holding company shall report, in a manner prescribed by the Board, any acquisition or disposition of shares.

(d) *Filing and processing procedures.* (1) Unless otherwise directed by the Board, applications, notifications, and reports required by this part shall be filed with the Reserve Bank of the dis-

trict in which the parent bank or bank holding company is located or, if none, the Reserve Bank of the district in which the applying or reporting institution is located. Instructions and forms for such applications, notifications and reports are available from the Reserve Banks.

(2) The Board shall act on an application or notification under this subpart within 60 calendar days after the Reserve Bank has accepted the application or notification unless the Board notifies the investor that the 60-day period is being extended and states the reasons for the extension.

§211.8 Reports of crimes and suspected crimes.

An Edge corporation or any branch or subsidiary thereof or an Agreement corporation or branch or any subsidiary thereof shall file a suspicious activity report in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

[58 FR 47209, Sept. 8, 1993, as amended at 60 FR 67054, Dec. 28, 1995; Reg. K, 61 FR 4344, Feb. 5, 1996]

Subpart B—Foreign Banking Organizations

§211.20 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) ("BHC Act"); and the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*) ("IBA").

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act and the IBA. It applies to foreign banks and foreign banking organizations with respect to:

(1) The limitations on interstate banking under section 5 of the IBA (12 U.S.C. 3103);

(2) The exemptions from the non-banking prohibitions of the BHC Act and the IBA afforded by sections 2(h) and 4(c)(9) of the BHC Act (12 U.S.C. 1841(h) and 1843(c)(9));

(3) Board approval of the establishment of an office of a foreign bank in the United States under sections 7(d)

and 10(a) of the IBA (12 U.S.C. 3105(d), 3107(a));

(4) The termination by the Board of a foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(e), 3107(b)) and the transmission of a recommendation to the Office of the Comptroller of the Currency to terminate a federal branch or federal agency under section 7(e)(5) of the IBA (12 U.S.C. 3105(e)(5));

(5) The examination of an office or affiliate of a foreign bank in the United States as provided in sections 7(c) and 10(c) of the IBA (12 U.S.C. 3105(c), 3107(c));

(6) The disclosure of supervisory information to a foreign supervisor under section 15 of the IBA (12 U.S.C. 3109);

(7) The limitations on loans to one borrower by state branches and state agencies of a foreign bank under section 7(h)(2) of the IBA (12 U.S.C. 3105(h)(2));

(8) The limitation of a state branch and a state agency to conducting only activities that are permissible for a federal branch under section 7(h)(1) of the IBA (12 U.S.C. 3105(h)(1));

(9) The deposit insurance requirement for retail deposit taking by a foreign bank under section 6 of the IBA (12 U.S.C. 3104); and

(10) The management of shell branches (12 U.S.C. 3105(k)).

(c) *Additional requirements.* Compliance by a foreign bank with the requirements of this subpart and the laws administered and enforced by the Board does not relieve the foreign bank of responsibility to comply with the laws and regulations administered by the licensing authority.

[56 FR 19574, Apr. 29, 1991, as amended at 57 FR 12997, Apr. 15, 1992. Redesignated at 58 FR 6358, Jan. 28, 1993; Reg. K, 61 FR 39053, July 26, 1996]

§ 211.21 Definitions.

The definitions contained in § 211.2 in subpart A of this part apply to this subpart except as a term is otherwise defined in this section:

(a) *Affiliate*, of a foreign bank or of a parent of a foreign bank, means any company that controls, is controlled by, or is under common control with,

the foreign bank or the parent of the foreign bank.

(b) *Agency* means any place of business of a foreign bank, located in any state, at which credit balances are maintained, checks are paid, money is lent, or, to the extent not prohibited by state or federal law, deposits are accepted from a person or entity that is not a citizen or resident of the United States. Obligations shall not be considered credit balances unless they are:

(1) Incidental to, or arise out of the exercise of, other lawful banking powers;

(2) To serve a specific purpose;

(3) Not solicited from the general public;

(4) Not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(5) Withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(6) Drawn upon in a manner reasonable in relation to the size and nature of the account.

(c) *Banking subsidiary*, with respect to a specified foreign bank, means a bank that is a subsidiary as the terms *bank* and *subsidiary* are defined in section 2 of the BHC Act (12 U.S.C. 1841).

(d) *Branch* means any place of business of a foreign bank, located in any state, at which deposits are received and that is not an agency, as that term is defined in paragraph (b) of this section.

(e) *Change the status* of an office means convert a representative office into a branch or agency, or an agency into a branch, but does not include renewal of the license of an existing office.

(f) *Commercial lending company* means any organization, other than a bank or an organization operating under section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 601-604a), organized under the laws of any state, that maintains credit balances permissible for an agency and engages in the business of making commercial loans. *Commercial lending company* includes any company chartered under Article XII of the banking law of the State of New York.

(g) *Comptroller* means the Office of the Comptroller of the Currency.

(h) *Control* has the same meaning assigned to it in section 2 of the BHC Act (12 U.S.C. 1841), and the terms *controlled* and *controlling* shall be construed consistently with the term *control*.

(i) *Domestic branch* means any place of business of a foreign bank, located in any state, that may accept domestic deposits and deposits that are incidental to or for the purpose of carrying out transactions in foreign countries.

(j) A foreign bank *engages directly in the business of banking outside of the United States* if the foreign bank engages directly in banking activities usual in connection with the business of banking in the countries where the foreign bank is organized or operating.

(k) To *establish* means to:

(1) Open and conduct business through an office;

(2) Acquire directly, through merger, consolidation, or similar transaction with another foreign bank, the operations of an office that is open and conducting business;

(3) Acquire an office through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(4) Change the status of an office; or

(5) Relocate an office from one state to another.

(l) *Federal agency, federal branch, state agency, and state branch* have the same meanings as in section 1 of the IBA (12 U.S.C. 3101).

(m) *Foreign bank* means an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside of the United States. The term *foreign bank* does not include a central bank of a foreign country that does not engage or seek to engage in a commercial banking business in the United States through an office.

(n) *Foreign banking organization* means a foreign bank, as defined in section 1(b)(7) of the IBA (12 U.S.C. 3101(7)), that operates a branch, agency, or commercial lending company subsidiary in the United States, or that controls a bank in the United States, and any company of which the foreign bank is a subsidiary.

(o) *Home country*, with respect to a foreign bank, means the country in which the foreign bank is chartered or incorporated.

(p) *Home country supervisor*, with respect to a foreign bank, means the governmental entity or entities in the foreign bank's home country with responsibility for the supervision and regulation of the foreign bank.

(q) *Licensing authority* means:

(1) The relevant state supervisor, with respect to an application to establish a state branch, state agency, commercial lending company, or representative office of a foreign bank; or

(2) The Comptroller, with respect to an application to establish a federal branch or federal agency.

(r) *Office or office of a foreign bank* means any branch, agency, representative office, or commercial lending company subsidiary of a foreign bank in the United States.

(s) The *parent* of a foreign bank means any company of which the foreign bank is a subsidiary; the *immediate parent* of a foreign bank is the company of which the foreign bank is a direct subsidiary; and the *ultimate parent* of a foreign bank is the parent of the foreign bank that is not the subsidiary of any other company.

(t) *Regional administrative office* means a representative office that:

(1) Is established by a foreign bank that operates one or more branches, agencies, commercial lending companies, or banks in the United States;

(2) Is located in the same city as one or more of the foreign bank's branches, agencies, commercial lending companies, or banks in the United States; and

(3) Manages, supervises, or coordinates the operations of the foreign bank or its affiliates, if any, in a particular geographic region.

(u) *Relevant state supervisor* means the state entity that is authorized to supervise and regulate a state branch, state agency, commercial lending company, or representative office.

(v) *Representative office* means any place of business of a foreign bank, located in any state, that is not a branch, agency, or subsidiary of the foreign bank.

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(w) *State* means any state of the United States or the District of Columbia.

(x) *Subsidiary* means any organization 25 percent or more of whose voting shares is directly or indirectly owned, controlled, or held with the power to vote by a company, including a foreign bank or foreign banking organization, or any organization that is otherwise controlled or capable of being controlled by a foreign bank or foreign banking organization.

[58 FR 6358, Jan. 28, 1993, as amended at Reg. K, 59 FR 55028, Nov. 3, 1994]

§ 211.22 Interstate banking operations of foreign banking organizations.

(a) *Determination of home state.* (1) A foreign bank (except a foreign bank to which paragraph (a)(2) of this section applies) that has any combination of domestic agencies or subsidiary commercial lending companies that were established before September 29, 1994, in more than one state and have been continuously operated shall select its home state from those states in which such offices or subsidiaries are located. A foreign bank shall do so by filing with the Board a declaration of home state by June 30, 1996. In the absence of such selection, the Board shall designate the home state for such foreign banks.

(2) A foreign bank that, as of September 29, 1994, had declared a home state or had a home state determined pursuant to the law and regulations in effect prior to that date shall have that state as its home state.

(3) A foreign bank that has any branches, agencies, subsidiary commercial lending companies, or subsidiary banks in one state, and has no such offices or subsidiaries in any other states, shall have as its home state the state in which such offices or subsidiaries are located.

(b) *Change of home State.* A foreign bank may change its home State once if:

(1) 30 days' prior notification of the proposed change is filed with the Board; and

(2) Domestic branches established and investments in banks acquired in reliance on its original home State selection are conformed to those that would have been permissible had the

new home State been selected as its home State originally.

(c) *Attribution of home State.* (1) A foreign bank or organization and the other foreign banks or organizations over which it exercises actual control shall be regarded as one foreign bank and shall be entitled to one home State.

(2) Actual control shall be conclusively presumed to exist in the case of a bank or organization that owns or controls a majority of the voting shares of another bank or organization.

(3) Where it appears to the Board that a foreign bank or organization exercises actual control over the management or policies of another foreign bank or organization, the Board may inform the parties that a preliminary determination of control has been made on the basis of the facts summarized in the communication. In the event of a preliminary determination of control by the Board, the parties shall within 30 days (or such longer period as may be permitted by the Board):

(i) Indicate to the Board a willingness to terminate the control relationship; or

(ii) Set forth such facts and circumstances as may support the contention that actual control does not exist (and may request a hearing to contest the Board's preliminary determination); or

(iii) Accede to the Board's preliminary determination, in which event the parties shall be regarded as one foreign bank and shall be entitled to one home State.

[45 FR 67058, Oct. 9, 1980, as amended at 56 FR 19574, Apr. 29, 1991. Redesignated and amended at 57 FR 12998, Apr. 15, 1992. Further Redesignated at 58 FR 6359, Jan. 28, 1993; Reg. K, 61 FR 24440, May 15, 1996]

§ 211.23 Nonbanking activities of foreign banking organizations.

(a) [Reserved]

(b) *Qualifying foreign banking organizations.* Unless specifically made eligible for the exemptions by the Board, a foreign banking organization shall qualify for the exemptions afforded by this section only if, disregarding its United States banking, more than half of its worldwide business is banking;

and more than half of its banking business is outside the United States.¹ In order to qualify, a foreign banking organization shall:

(1) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed total worldwide nonbanking assets;

(ii) Revenues derived from business of banking outside the United States exceed total revenues derived from its worldwide nonbanking business; or

(iii) Net income derived from the business of banking outside the United States exceeds total net income derived from its worldwide nonbanking businesses; and

(2) Meet at least two of the following requirements:

(i) Banking assets held outside the United States exceed banking assets held in the United States;

(ii) Revenues derived from the business of banking outside the United States exceed revenues derived from the business of banking in the United States; or

(iii) Net income derived from the business of banking outside the United States exceeds net income derived from the business of banking in the United States.

(c) *Determining assets, revenues, and net income.* (1) For purposes of paragraph (b) of this section, the total assets, revenues, and net income of an organization may be determined on a consolidated or combined basis. Assets, revenues and net income of companies in which the foreign banking organization owns 50 per cent or more of the voting shares shall be included when determining total assets, revenues, and net income. The foreign banking organization may include assets, revenues, and net income of companies in which it owns 25 per cent or more of the vot-

ing shares if all such companies within the organization are included;

(2) Assets devoted to, or revenues or net income derived from, activities listed in §211.5(d) shall be considered banking assets, or revenues or net income derived from the banking business, when conducted within the foreign banking organization by a foreign bank or its subsidiaries.

(d) *Loss of eligibility for exemptions.* (1) A foreign banking organization that qualified under paragraph (b) of this section shall cease to be eligible for the exemptions of this section if it fails to meet the requirements of paragraph (b) of this section for two consecutive years as reflected in its Annual Reports (F.R. Y-7) filed with the Board.

(2) A foreign banking organization that ceases to be eligible for the exemptions of this section may continue to engage in activities or retain investments commenced or acquired prior to the end of the first fiscal year for which its Annual Report reflects nonconformance with paragraph (b) of this section. Activities commenced or investments made after that date shall be terminated or divested within three months of the filing of the second Annual Report unless the Board grants consent to continue the activity or retain the investment under paragraph (e) of this section.

(3) A foreign banking organization that ceases to qualify under paragraph (b) of this section, or an affiliate of such foreign banking organization, that requests a specific determination of eligibility under paragraph (e) of this section may, prior to the Board's determination on eligibility, continue to engage in activities and make investments under the provisions of paragraphs (f)(1), (2) and (4) of this section.

(e) *Specific determination of eligibility for nonqualifying foreign banking organizations.* (1) A foreign banking organization that does not qualify under paragraph (b) of this section for the exemptions afforded by this section, or that has lost its eligibility for the exemptions under paragraph (d) of this section, may apply to the Board for a specific determination of eligibility for the exemptions.

(2) A foreign banking organization may apply for a specific determination

¹None of the assets, revenues, or net income, whether held or derived directly or indirectly, of a subsidiary bank, branch, agency, commercial lending company, or other company engaged in the business of banking in the United States (including any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands) shall be considered held or derived from the business of banking outside the United States.

prior to the time it ceases to be eligible for the exemptions afforded by this section.

(3) In determining whether eligibility for the exemptions would be consistent with the purposes of the BHC Act and in the public interest, the Board shall consider:

(i) The history and the financial and managerial resources of the organization;

(ii) The amount of its business in the United States;

(iii) The amount, type, and location of its nonbanking activities, including whether such activities may be conducted by U.S. banks or bank holding companies; and

(iv) Whether eligibility of the foreign banking organization would result in undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(4) Such determination shall be subject to any conditions and limitations imposed by the Board, including any requirements to cease activities or dispose of investments.

(5) Determinations of eligibility would generally not be granted where a majority of the business of the foreign banking organization derives from commercial or industrial activities or where the U.S. banking business of the organization is larger than the non-U.S. banking business conducted directly by the foreign bank or banks (as defined in §211.2(j) of this part) of the organization.

(f) *Permissible activities and investments.* A foreign banking organization that qualifies under paragraph (b) of this section may:

(1) Engage in activities of any kind outside the United States;

(2) Engage directly in activities in the United States that are incidental to its activities outside the United States;

(3) Own or control voting shares of any company that is not engaged, directly or indirectly, in any activities in the United States other than those that are incidental to the international or foreign business of such company;

(4) Own or control voting shares of any company in a fiduciary capacity under circumstances that would entitle

such shareholding to an exemption under section 4(c)(4) of the BHC Act if the shares were held or acquired by a bank.

(5) Own or control voting shares of a foreign company that is engaged directly or indirectly in business in the United States other than that which is incidental to its international or foreign business, subject to the following limitations:

(i) More than 50 percent of the foreign company's consolidated assets shall be located, and consolidated revenues derived from, outside the United States; provided however that, if the foreign company fails to meet the requirements of this paragraph for two consecutive years (as reflected in Annual Reports (F.R. Y-7)) filed with the Board by the foreign banking organization, the foreign company shall be divested or its activities terminated within one year of the filing of the second consecutive Annual Report that reflects nonconformance with the requirements of this paragraph, unless the Board grants consent to retain the investment under paragraph (g) of this section;

(ii) The foreign company shall not directly underwrite, sell, or distribute, nor own or control more than 5 percent of the voting shares of a company that underwrites, sells, or distributes securities in the United States except to the extent permitted bank holding companies;

(iii) If the foreign company is a subsidiary of the foreign banking organization, the foreign company must be, or must control, an operating company, and its direct or indirect activities in the United States shall be subject to the following limitations:

(A) The foreign company's activities in the United States shall be the same kind of activities or related to the activities engaged in directly or indirectly by the foreign company abroad as measured by the *establishment* categories of the Standard Industrial Classification (SIC) (an activity in the United States shall be considered related to an activity outside the United States if it consists of supply, distribution, or sales in furtherance of the activity);

(B) The foreign company may engage in activities in the United States that consist of banking, securities, insurance or other financial operations, or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act, only under regulations of the Board or with the prior approval of the Board.

(I) Activities within Division H (Finance, Insurance, and Real Estate) of the SIC shall be considered banking or financial operations for this purpose, with the exception of acting as operators of nonresidential buildings (SIC 6512), operators of apartment buildings (SIC 6513), operators of dwellings other than apartment buildings (SIC 6514), and operators of residential mobile home sites (SIC 6515); and operating title abstract offices (SIC 6541); and

(2) The following activities shall be considered financial activities and may be engaged in only with the approval of the Board under subsection (g): Credit reporting services (SIC 7323); computer and data processing services (SIC 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, and 7379); armored car services (SIC 7381); management consulting (SIC 8732, 8741, 8742, and 8748); certain rental and leasing activities (SIC 4741, 7352, 7353, 7359, 7513, 7514, 7515, and 7519); accounting, auditing and bookkeeping services (SIC 8721); courier services (SIC 4215 and 4513); and arrangement of passenger transportation (SIC 4724, 4725, and 4729).

(g) *Exemptions under section 4(c)(9) of the BHC Act.* A foreign banking organization that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the BHC Act may apply to the Board for such a determination by submitting to the Reserve Bank of the District in which its banking operations in the United States are principally conducted a letter setting forth the basis for that opinion.

(h) *Reports.* (1) The foreign banking organization shall inform the Board through the organization's Reserve Bank within 30 days after the close of each quarter of all shares of companies engaged, directly or indirectly, in activities in the United States that were

acquired during such quarter under the authority of this section.

(2) The foreign banking organization shall also report any direct activities in the United States commenced during such quarter by a foreign subsidiary of the foreign banking organization. This information shall (unless previously furnished) include a brief description of the nature and scope of each company's business in the United States, including the 4-digit SIC numbers of the activities in which the company engages. Such information shall also include the 4-digit SIC numbers of the direct parent of any U.S. company acquired, together with a statement of total assets and revenues of the direct parent.

(i) *Availability of information.* If any information required under this section is unknown and not reasonably available to the foreign banking organization, either because obtaining it would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of a company that is not controlled by the organization, the organization shall:

(1) Give such information on the subject as it possesses or can reasonably acquire together with the sources thereof; and

(2) Include a statement either showing that unreasonable effort or expense would be involved or indicating that the company whose shares were acquired is not controlled by the organization and stating the result of a request for information.

(12 U.S.C. 3101 *et seq.*; 12 U.S.C. 1841 *et seq.*; sec. 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*)

[45 FR 81540, Dec. 11, 1980, as amended at 47 FR 51095, Nov. 12, 1982; 50 FR 39986, Oct. 1, 1985; 56 FR 19574, Apr. 29, 1991. Redesignated and amended at 57 FR 12998, Apr. 15, 1992. Further redesignated and amended at 58 FR 6359, Jan. 28, 1993]

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

(a) *Board approval of offices of foreign banks—*(1) *Prior Board approval of branches, agencies, or commercial lending companies of foreign banks.* (i) Except as

otherwise provided in paragraph (a)(3) of this section, a foreign bank shall obtain the approval of the Board before it:

(A) Establishes a branch, agency, or commercial lending company subsidiary in the United States; or

(B) Acquires ownership or control of a commercial lending company subsidiary.

(2) *Prior Board approval of representative offices of foreign banks.* Except as otherwise provided in paragraphs (a)(2) or (a)(3) of this section, a foreign bank shall obtain the approval of the Board before it establishes a representative office in the United States.

(i) *Prior notice for certain representative offices.* After providing 45 days' prior written notice to the Board, a foreign bank that is subject to the BHC Act, either directly or through section 8(a) of the IBA (12 U.S.C. 3106(a)), may establish:

(A) A regional administrative office; or

(B) A representative office, but only if the Board has previously determined that the foreign bank proposing to establish a representative office is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor, or previously has been approved for a representative office by Board order. The Board may waive the 45-day period if it finds that immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is received by the appropriate Reserve Bank. The Board may suspend the period or require Board approval prior to the establishment of such an office if the notification raises significant policy, prudential or supervisory concerns.

(ii) *General consent for representative offices.* The Board grants its general consent for a foreign bank that is subject to section 8(a) of the IBA (12 U.S.C. 3106(a)), to establish a representative office that solely engages in limited administrative functions (such as separately maintaining back office support systems) that are clearly defined, are performed in connection with the United States banking activities of the foreign bank, and do not involve contact or liaison with customers or potential

customers beyond incidental contact with existing customers relating to administrative matters (such as verification or correction of account information), provided that the foreign bank notifies the Board in writing within 30 days of the establishment of the representative office.

(3) *After-the-fact Board approval.* Where a foreign bank proposes to establish a branch, agency, representative office, or commercial lending company in the United States through the acquisition of, or merger or consolidation with, a foreign bank with an office in the United States, the Board may, in its discretion, allow the acquisition, merger, or consolidation to proceed before an application to establish the office has been filed or acted upon under this section if:

(i) The foreign bank or banks resulting from the acquisition, merger, or consolidation, will not directly or indirectly own or control more than 5 percent of any class of the voting securities of, or control, a U.S. bank;

(ii) The Board is given reasonable advance notice of the proposed acquisition, merger, or consolidation;

(iii) Prior to consummation of the acquisition, merger, or consolidation, each of the relevant foreign banks commits in writing to comply with the procedures for an application under this section within a reasonable period of time or has already filed an application; and

(iv) Each of the relevant foreign banks commits in writing to abide by the Board's decision on the application, including, if necessary, a decision to terminate the activities of any such U.S. office, as the Board or the Comptroller may require.

(4) *Notice of change in ownership or control or conversion of existing office.* A foreign bank with a U.S. office shall notify the Board in writing within 10 days of either:

(i) A change in the foreign bank's ownership or control where the foreign bank is acquired or controlled by another foreign bank or company and the acquired foreign bank with a U.S. office continues to operate in the same corporate form as prior to the change in ownership or control; or

(ii) The conversion of a branch to an agency or representative office, an agency to a representative office, a state branch to a federal branch, or a state agency to a federal agency.

(5) *Transactions subject to approval under Regulation Y.* Subpart B of the Board's Regulation Y (12 CFR 225.11-225.14) governs the acquisition by a foreign banking organization of direct or indirect ownership or control of any voting securities of a bank or bank holding company in the United States if the acquisition results in the foreign banking organization's ownership or control of more than 5 percent of any class of voting securities of a U.S. bank or bank holding company, including through acquisition of a foreign bank or foreign banking organization that owns or controls more than 5 percent of any class of the voting securities of a U.S. bank or bank holding company.

(b) *Procedures for application*—(1) *Filing application.* An application for the Board's approval pursuant to this section shall be filed in the manner prescribed by the Board.

(2) *Publication requirement*—(i) *General.* Except with respect to a proposed transaction where more extensive notice is required by statute or as otherwise provided in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, the applicant shall publish a notice in a newspaper of general circulation in the community in which the applicant proposes to engage in business. The notice shall state that an application is being filed as of the date of the notice and provide the name of the applicant, the subject matter of the application, the place where comments should be sent, and the date by which comments are due pursuant to paragraph (b)(3) of this section. The applicant shall furnish with its application to the Board a copy of the notice, the date of its publication, and the name and address of the newspaper in which it was published.

(ii) *Exception.* The Board may modify the publication requirement of paragraph (b)(2)(i) of this section in appropriate circumstances.

(iii) *Federal branch or federal agency.* In the case of an application to establish a federal branch or federal agency, compliance with the publication proce-

dures of the Comptroller shall satisfy the publication requirement of this section. Comments regarding the application should be sent to the Board and the Comptroller.

(3) *Written comments.* Within 30 days after publication as required in paragraph (b)(2) of this section, any person may submit to the Board written comments and data on an application. The Board may extend the 30-day comment period if the Board determines that additional relevant information is likely to be provided by interested persons or if other extenuating circumstances exist.

(4) *Board action on application*—(i) *Time limits.* The Board shall act on an application from a foreign bank within 60 calendar days after the foreign bank has been notified that its application has been accepted, unless the Board determines that the public interest will be served by providing additional time to review the application and notifies the applicant that the 60-day period is being extended.

(ii) *Additional information.* The Board may request any information in addition to that supplied in the application when the Board believes that additional information is necessary for its decision.

(5) *Coordination with other regulators.* Upon receipt of an application by a foreign bank under this section, the Board shall promptly notify, consult with, and consider the views of the licensing authority.

(c) *Standards for approval*—(1) *Mandatory standards*—(i) *General.* As specified in section 7(d) of the IBA (12 U.S.C. 3105(d)), the Board may not approve an application to establish a branch or an agency, or to establish or acquire ownership or control of a commercial lending company, unless it determines that:

(A) Each of the foreign bank and any parent foreign bank engages directly in the business of banking outside the United States and is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor; and

(B) The foreign bank has furnished to the Board the information that the Board requires in order to assess the application adequately.

(ii) *Basis for determining comprehensive supervision or regulation on a consolidated basis.* In determining whether a foreign bank and any parent foreign bank is subject to comprehensive supervision or regulation on a consolidated basis, the Board shall determine whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. In making such a determination, the Board shall assess, among other factors, the extent to which the home country supervisor:

(A) Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide;

(B) Obtains information on the condition of the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise;

(C) Obtains information on the dealings and relationships between the foreign bank and its affiliates, both foreign and domestic;

(D) Receives from the foreign bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the foreign bank's financial condition on a worldwide, consolidated basis;

(E) Evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

(2) *Discretionary standards.* In acting on any application under this subpart, the Board may take into account:

(i) *Consent of home country supervisor.* Whether the home country supervisor of the foreign bank has consented to the proposed establishment of a branch, agency, or commercial lending company subsidiary;

(ii) *Financial resources.* The financial resources of the foreign bank (including the foreign bank's capital position, projected capital position, profitability, level of indebtedness, and future prospects) and the condition of any U.S. office of the foreign bank;

(iii) *Managerial resources.* The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors; the integrity of its principal shareholders; management's experience and capacity to engage in international banking; and the record of the foreign bank and its management of complying with laws and regulations, and of fulfilling any commitments to, and any conditions imposed by, the Board in connection with any prior application;

(iv) *Sharing information with supervisors.* Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(v) *Assurances to Board.* Whether the foreign bank has provided the Board with adequate assurances that information will be made available to the Board on the operations or activities of the foreign bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal banking statutes; these assurances shall include a statement from the foreign bank describing the laws that would restrict the foreign bank or any of its parents from providing information to the Board;

(vi) *Compliance with U.S. law.* Whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. law, and whether the applicant has established adequate controls and procedures in each of its offices to ensure continuing compliance with U.S. law, including controls directed to detection of money laundering and other unsafe or unsound banking practices.

(3) *Additional factor.* In acting on an application, the Board may consider the needs of the community and the history of operation of the foreign bank and its relative size in its home country, provided, however, that the size of the foreign bank shall not be the sole factor in determining whether an office of a foreign bank should be approved.

(4) *Board conditions on approval.* The Board may impose such conditions on

its approval as it deems necessary, including a condition which may permit future termination of any activities by the Board or, in the case of a federal branch or a federal agency, by the Comptroller, based on the inability of the foreign bank to provide information on its activities or those of its affiliates that the Board deems necessary to determine and enforce compliance with U.S. banking laws.

(d) *Representative offices*—(1) *Activities*. A representative office may engage in:

(i) Representational and administrative functions in connection with the banking activities of the foreign bank which may include soliciting new business for the foreign bank, conducting research, acting as liaison between the foreign bank's head office and customers in the United States, performing any of the activities described in 12 CFR 250.141(h), or performing back office functions, but shall not include contracting for any deposit or deposit-like liability, lending money, or engaging in any other banking activity for the foreign bank; and

(ii) Other functions for or on behalf of the foreign bank or its affiliates, such as operating as a regional administrative office of the foreign bank, but only to the extent that such other functions are not banking activities and are not prohibited by applicable federal or state law or by ruling or order of the Board.

(2) *Standards for approval of representative offices*. As specified in section 10(a)(2) of the IBA (12 U.S.C. 3107(a)(2)), in acting on the application of a foreign bank to establish a representative office, the Board shall take into account to the extent it deems appropriate the standards for approval set out in paragraph (c) of this section.

(3) *Special purpose foreign government banks*. A foreign government-owned organization engaged in banking activities in its home country that are not commercial in nature may apply to the Board for a determination that the organization is not a *foreign bank* for purposes of this section. A written request setting forth the basis for such a determination may be submitted to the Reserve Bank of the District in which the foreign organization's representative office is located in the United States or

to the Board in the case of a proposed establishment of a representative office. The Board will review and act upon each such request on a case-by-case basis.

(4) *Additional requirements*. The Board may impose any additional requirements that it determines to be necessary to carry out the purposes of the IBA.

(e) *Preservation of existing authority*. Nothing in this subpart shall be construed to relieve any foreign bank or foreign banking organization from any otherwise applicable requirement of federal or state law, including any applicable licensing requirement.

(f) *Reports of crimes and suspected crimes*. Except for a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation, a branch or agency or a representative office of a foreign bank operating in the United States shall file a suspicious activity report in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

(g) *Management of shell branches*. (1) A state-licensed branch or agency shall not manage, through an office of the foreign bank which is located outside the United States and is managed or controlled by such state-licensed branch or agency, any type of activity that a bank organized under the laws of the United States or any State is not permitted to manage at any branch or subsidiary of such bank which is located outside the United States.

(2) For purposes of this paragraph (g), an office of a foreign bank located outside the United States is "managed or controlled" by a state-licensed branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that non-U.S. office, resides at the state-licensed branch or agency.

(3) The types of activities that a state-licensed branch or agency may manage through an office located outside the United States that it manages or controls include the types of activities authorized to a U.S. bank by state

or federal charters, regulations issued by chartering or regulatory authorities, and other U.S. banking laws, including the Federal Reserve Act, and the implementing regulations, but U.S. procedural or quantitative requirements that may be applicable to the conduct of such activities by U.S. banks shall not apply.

[58 FR 6359, Jan. 28, 1993, as amended at 58 FR 47209, Sept. 8, 1993; Reg. K, 61 FR 2901, Jan. 30, 1996; 61 FR 4344, Feb. 5, 1996; 61 FR 39053, July 26, 1996]

§ 211.25 Termination of offices of foreign banks.

(a) *Grounds for termination*—(1) *General*. Under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(e), 3107(b)), the Board may order a foreign bank to terminate the activities of its representative office, state branch, state agency, or commercial lending company subsidiary if the Board finds that:

(i) The foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor in accordance with § 211.24(c)(1) of this subpart; or

(ii)(A) There is reasonable cause to believe that the foreign bank or any of its affiliates has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(B) As a result of such violation or practice, the continued operation of the foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary would not be consistent with the public interest or with the purposes of the IBA, the BHC Act, or the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1811 *et seq.*).

(2) *Additional ground*. The Board may also enforce any condition imposed in connection with an order issued under § 211.24 of this subpart.

(b) *Factor*. In making its findings under this section, the Board may take into account the needs of the community as well as the history of operation of the foreign bank and its relative size in its home country, provided, however, that the size of the foreign bank shall not be the sole determining factor in a decision to terminate an office.

(c) *Consultation with relevant state supervisor*. Except in the case of termination pursuant to paragraph (d)(3) of this section, before issuing an order terminating the activities of a state branch, state agency, representative office, or commercial lending company subsidiary under this section, the Board shall request and consider the views of the relevant state supervisor.

(d) *Termination procedures*—(1) *Notice and hearing*. Except as otherwise provided in paragraph (d)(3) of this section, an order issued under paragraph (a)(1) of this section shall be issued only after notice to the relevant state supervisor and the foreign bank and after an opportunity for a hearing.

(2) *Procedures for hearing*. Hearings under this section shall be conducted pursuant to the Board's Rules of Practice for Hearings (12 CFR part 263).

(3) *Expedited procedure*. The Board may act without providing an opportunity for a hearing if it determines that expeditious action is necessary in order to protect the public interest. When the Board finds that it is necessary to act without providing an opportunity for a hearing, the Board, solely in its discretion, may provide the foreign bank that is the subject of the termination order with notice of the intended termination order, grant the foreign bank an opportunity to present a written submission opposing issuance of the order, or take any other action designed to provide the foreign bank with notice and an opportunity to present its views concerning the order.

(e) *Termination of federal branch or federal agency*. The Board may transmit to the Comptroller a recommendation that the license of a federal branch or federal agency be terminated if the Board has reasonable cause to believe that the foreign bank or any affiliate of the foreign bank has engaged in conduct for which the activities of a state branch or state agency may be terminated pursuant to this section.

(f) *Voluntary termination*. A foreign bank shall notify the Board at least 30 days prior to terminating the activities of any office. Notice pursuant to this paragraph is in addition to, and does not satisfy, any other federal or state requirements relating to the termination of an office or the requirement

for prior notice of the closing of a branch pursuant to section 39 of the FDI Act (12 U.S.C. 1831p).

[58 FR 6359, Jan. 28, 1993]

§ 211.26 Examination of offices and affiliates of foreign banks.

(a) *Conduct of examinations*—(1) *Examination of branches, agencies, commercial lending companies, and affiliates.* The Board may examine any branch or agency of a foreign bank, any commercial lending company or bank controlled by one or more foreign banks or one or more foreign companies that control a foreign bank, and any other office or affiliate of a foreign bank conducting business in any state.

(2) *Examination of representative offices.* The Board may examine any representative office in the manner and with the frequency it deems appropriate.

(b) *Coordination of examinations.* To the extent possible, the Board shall coordinate its examinations of the U.S. offices and U.S. affiliates of a foreign bank with the licensing authority and, in the case of an insured branch, the Federal Deposit Insurance Corporation (FDIC), including through simultaneous examinations of the U.S. offices and U.S. affiliates of a foreign bank.

(c) *Annual on-site examinations.* Each branch, agency, or commercial lending company subsidiary of a foreign bank shall be examined on-site at least once during each 12-month period (beginning on the date the most recent examination of the office ended) by:

- (1) The Board;
- (2) The FDIC, if the branch of the foreign bank accepts or maintains insured deposits;
- (3) The Comptroller, if the branch or agency of the foreign bank is licensed by the Comptroller; or
- (4) The state supervisor, if the office of the foreign bank is licensed or chartered by the state.

[58 FR 6359, Jan. 28, 1993]

§ 211.27 Disclosure of supervisory information to foreign supervisors.

(a) *Disclosure by Board.* The Board may disclose information obtained in the course of exercising its supervisory or examination authority to a foreign

bank regulatory or supervisory authority if the Board determines that disclosure is appropriate for bank supervisory or regulatory purposes and will not prejudice the interests of the United States.

(b) *Confidentiality.* Before making any disclosure of information pursuant to paragraph (a) of this section, the Board shall obtain, to the extent necessary, the agreement of the foreign bank regulatory or supervisory authority to maintain the confidentiality of such information to the extent possible under applicable law.

[58 FR 6359, Jan. 28, 1993]

§ 211.28 Limitation on loans to one borrower.

(a) *Limitation.* Except as otherwise provided in paragraph (b) of this section, the total loans and extensions of credit by all the state branches and agencies of a foreign bank outstanding to a single borrower at one time shall be aggregated with the total loans and extensions of credit by all federal branches and federal agencies of the same foreign bank outstanding to such borrower at the time and shall be subject to the limitations and other provisions of section 5200 of the Revised Statutes (12 U.S.C. 84), and the regulations promulgated thereunder, in the same manner that extensions of credit by a federal branch or federal agency are subject to section 4(b) of the IBA (12 U.S.C. 3102(b)) as if such state branches and agencies were federal branches and agencies.

(b) *Preexisting loans and extensions of credit.* Any loans or extensions of credit to a single borrower that were originated prior to December 19, 1991 by a state branch or state agency of the same foreign bank and that, when aggregated with loans and extensions of credit by all other branches and agencies of the foreign bank, exceed the limits set forth in paragraph (a) of this section, may be brought into compliance with such limitations through routine repayment, provided that any new loans or extensions of credit, including renewals of existing unfunded credit lines or extensions of the dates of maturity of existing loans, to the same borrower shall comply with the

limits set forth in paragraph (a) of this section.

[58 FR 6359, Jan. 28, 1993]

§211.29 Applications by state-licensed branches and agencies to conduct activities not permissible for federal branches.

(a) *Scope.* A state-licensed branch or agency shall file with the Board a prior written application for permission to engage in or continue to engage in any type of activity that:

(1) Is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Office of the Comptroller of the Currency; or

(2) Is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction.

(b) *Exceptions.* No application shall be required by a state-licensed branch or agency to conduct any activity that is otherwise permissible under applicable state and federal law or regulation and that:

(1) Has been determined by the FDIC pursuant to 12 CFR 362.4(c)(3)(i)-(c)(3)(ii)(A) not to present a significant risk to the affected deposit insurance fund;

(2) Is permissible for a federally-licensed branch but the OCC imposes a quantitative limitation on the conduct of such activity by the federal branch;

(3) Is conducted as agent rather than as principal, provided that the activity is one that could be conducted by a state-chartered bank headquartered in the same state in which the branch or agency is licensed; or

(4) Any other activity that the Board has determined may be conducted by any state-licensed branch or agency of a foreign bank without further application to the Board.

(c) *Contents of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted and an estimate of the ex-

pected dollar volume associated with the activity;

(2) An analysis of the impact of the proposed activity on the condition of the U.S. operations of the foreign bank in general and of the branch or agency in particular, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management, authorizing the conduct of such activity and the filing of this application;

(4) If the activity is to be conducted by a state-licensed insured branch, a statement by the applicant of whether or not it is in compliance with 12 CFR 346.19 and 346.20, Pledge of Assets and Asset Maintenance, respectively;

(5) If the activity is to be conducted by a state-licensed insured branch, statements by the applicant:

(i) That it has complied with all requirements of the Federal Deposit Insurance Corporation concerning an application to conduct the activity and the status of the application, including a copy of the FDIC's disposition of such application, if available; and

(ii) Explaining why the activity will pose no significant risk to the deposit insurance fund; and

(6) Any other information that the Reserve Bank deems appropriate.

(d) *Factors considered in determination.*

(1) The Board shall consider the following factors in determining whether a proposed activity is consistent with sound banking practice:

(i) The types of risks, if any, the activity poses to the U.S. operations of the foreign banking organization in general and the branch or agency in particular;

(ii) If the activity poses any such risks, the magnitude of each risk; and

(iii) If a risk is not de minimis, the actual or proposed procedures to control and minimize the risk.

(2) Each of the factors set forth in paragraph (d)(1) of this section, shall be evaluated in light of the financial condition of the foreign bank in general

and the branch or agency in particular and the volume of the activity.

(e) *Application procedures.* Applications pursuant to this section shall be filed with the responsible Reserve Bank for the foreign bank. An application shall not be deemed complete until it contains all the information requested by the Reserve Bank and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific conditions or limitations.

(f) *Divestiture or cessation.* (1) In the event that an applicant's application for permission to continue to conduct an activity is not approved by the Board or, if applicable, the FDIC, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the responsible Reserve Bank within 60 days of the disapproval. The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity and shall include a projected timetable describing how long the divestiture or cessation is expected to take. Divestitures or cessation shall be complete within one year from the date of the disapproval, or within such shorter period of time as the Board shall direct.

(2) In the event that a foreign bank operating a state branch or agency chooses not to apply to the Board for permission to continue to conduct an activity that is not permissible for a federal branch or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction, the foreign bank shall submit a written plan of divestiture or cessation, in conformance with paragraph (f)(1) of this section, within 60 days of January 1, 1995 or of such change or decision.

[Reg. K, 59 FR 55028, Nov. 3, 1994]

§ 211.30 Criteria for evaluating the U.S. operations of foreign banks not subject to consolidated supervision.

(a) *General.* Pursuant to the Foreign Bank Supervision Enhancement Act, Pub.L. 102-242, 105 Stat. 2286 (1991), the Board shall develop and publish cri-

teria to be used in evaluating the operations of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis.

(b) *Criteria.* Following a determination by the Board that, having taken into account the standards set forth in § 211.24(c)(1) of this subpart, a foreign bank is not subject to comprehensive, consolidated supervision by its home country supervisor, the Board shall consider the following criteria in determining whether the foreign bank's U.S. operations should be permitted to continue and, if so, whether any supervisory constraints should be placed upon the bank in connection with those operations:

(1) The proportion of the foreign bank's total assets and total liabilities that are located or booked in its home country, as well as the distribution and location of its assets and liabilities that are located or booked elsewhere;

(2) The extent to which the operations and assets of the foreign bank and any affiliates are subject to supervision by its home country supervisor;

(3) Whether the appropriate authorities in the home country of such foreign bank are actively working to establish arrangements for the comprehensive, consolidated supervision of such bank and whether demonstrable progress is being made;

(4) Whether the foreign bank has effective and reliable systems of internal controls and management information and reporting, which enable its management properly to oversee its worldwide operations;

(5) Whether the foreign bank's home country supervisor has any objection to the bank continuing to operate in the United States;

(6) Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(7) The relationship of the U.S. operations to the other operations of the foreign bank, including whether the foreign bank maintains funds in its U.S. offices that are in excess of

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amounts due to its U.S. offices from the foreign bank's non-U.S. offices;

(8) The soundness of the foreign bank's overall financial condition;

(9) The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors and the integrity of its principal shareholders;

(10) The scope and frequency of external audits of the foreign bank;

(11) The operating record of the foreign bank generally and its role in the banking system in its home country;

(12) The foreign bank's record of compliance with relevant laws, as well as the adequacy of its money laundering controls and procedures, in respect of its worldwide operations;

(13) The operating record of the U.S. offices of the foreign bank;

(14) The views and recommendations of the Office of the Comptroller of the Currency or the state banking regulators in those states in which the foreign bank has operations, as appropriate;

(15) Whether the foreign bank, if requested, has provided the Board with adequate assurances that such information will be made available on the operations or activities of the foreign bank and any of its affiliates as the Board deems necessary to determine and enforce compliance with the International Banking Act, the Bank Holding Company Act, and other applicable federal banking statutes; and

(16) Any other information relevant to the safety and soundness of the U.S. operations of the foreign bank.

(c) *Restrictions on U.S. operations.*—(1) *Terms of agreement.* Any foreign bank that the Board determines is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor may be required to enter into an agreement to conduct its U.S. operations subject to such restrictions as the Board, having considered the criteria set forth in paragraph (b) of this section, determines to be appropriate in order to assure the safety and soundness of its U.S. operations.

(2) *Failure to enter into or comply with agreement.* A foreign bank that is required by the Board to enter into an agreement pursuant to paragraph (c)(1)

of this section and either fails to do so or fails to comply with the terms of such agreement may be subject to enforcement action in order to assure safe and sound banking operations under 12 U.S.C. 1818, or to termination or a recommendation for termination of its U.S. operations under §211.25 (a) and (e) of this subpart and section (7)(e) of the IBA (12 U.S.C. 3105(e)).

[Reg. K, 61 FR 6921, Feb. 23, 1996]

Subpart C—Export Trading Companies

SOURCE: 56 FR 19575, Apr. 29, 1991, unless otherwise noted.

§211.31 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) ("BHC Act"), the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235 (1982)) ("BESA"), and the Export Trading Company Act Amendments of 1988 (Title III, Pub. L. 100-418, 102 Stat. 1384 (1988)) ("ETC Act Amendments").

(b) *Purpose and scope.* This subpart is in furtherance of the purposes of the BHC Act, the BESA, and the ETC Act Amendments, the latter two statutes being designed to increase U.S. exports by encouraging investments and participation in export trading companies by bank holding companies and the specified investors. The provisions of this subpart apply to the following (hereinafter referred to as "eligible investors"):

(1) Bank holding companies as defined in section 2 of the BHC Act (12 U.S.C. 1841(a));

(2) Edge and Agreement corporations, as described in §211.1(c) of this part, that are subsidiaries of bank holding companies but are not subsidiaries of banks;

(3) Bankers' banks as described in section 4(c)(14)(F)(iii) of the BHC Act (12 U.S.C. 1843(c)(14)(F)(iii)); and

(4) Foreign banking organizations as defined in §211.21(n) of this part.

[56 FR 19575, Apr. 29, 1991, as amended at 58 FR 46076, Sept. 1, 1993]

§ 211.32 Definitions.

The definitions of § 211.2 in subpart A apply to this subpart subject to the following:

(a) *Export trading company* means a company that is exclusively engaged in activities related to international trade and, by engaging in one or more export trade services, derives:

(1) At least one-third of its revenues in each consecutive four-year period from the export of, or from facilitating the export of, goods and services produced in the United States by persons other than the export trading company or its subsidiaries; and

(2) More revenues in each four-year period from export activities as described in paragraph (a)(1) of this section than it derives from the import, or facilitating the import, into the United States of goods or services produced outside the United States.

For purposes of this section, *revenues* shall include net sales revenues from exporting, importing, or third party trade in goods by the export trading company for its own account, and gross revenues derived from all other activities of the export trading company.

(b) The terms *bank*, *company* and *subsidiary* have the same meanings as those contained in section 2 of the BHC Act (12 U.S.C. 1841).

§ 211.33 Investments and extensions of credit.

(a) *Amount of investments.* In accordance with the procedures of § 211.34 of this subpart, an eligible investor may invest no more than 5 percent of its consolidated capital and surplus in one or more export trading companies, except that an Edge or Agreement corporation not engaged in banking may invest as much as 25 percent of its consolidated capital and surplus but no more than 5 percent of the consolidated capital and surplus of its parent bank holding company.

(b) *Extensions of credit*—(1) *Amount.* An eligible investor in an export trading company or companies may extend credit directly or indirectly to the export trading company or companies in a total amount that at no time exceeds 10 percent of the investor's consolidated capital and surplus.

(2) *Terms*—(i) An eligible investor in an export trading company may not extend credit directly or indirectly to the export trading company or any of its customers or to any other investor holding 10 percent or more of the shares of the export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extensions of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(ii) For the purposes of this provision, an investor in an export trading company includes any affiliate of the investor.

(3) *Collateral requirements.* Covered transactions between a bank and an affiliated export trading company in which a bank holding company has invested pursuant to this subpart are subject to the collateral requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c), except where a bank issues a letter of credit or advances funds to an affiliated export trading company solely to finance the purchase of goods for which:

(i) The export trading company has a bona fide contract for the subsequent sale of the goods; and

(ii) The bank has a security interest in the goods or in the proceeds from their sale at least equal in value to the letter of credit or the advance.

§ 211.34 Procedures for filing and processing notices.

(a) *Filing notice*—(1) *Prior notice of investment.* An eligible investor shall give the Board 60 days' prior written notice of any investment in an export trading company.

(2) *Subsequent notice*—(i) An eligible investor shall give the Board 60 days' prior written notice of changes in the activities of an export trading company that is a subsidiary of the investor if the export trading company expands its activities beyond those described in the initial notice to include:

(A) Taking title to goods where the export trading company does not have a firm order for the sale of those goods;

(B) Product research and design;

(C) Product modification; or

(D) Activities not specifically covered by the list of activities contained in section 4(c)(14)(F)(ii) of the BHC Act.

(ii) Such an expansion of activities shall be regarded as a proposed investment under this subpart.

(b) *Time period for Board action.* (1) A proposed investment that has not been disapproved by the Board may be made 60 days after the Reserve Bank accepts the notice for processing. A proposed investment may be made before the expiration of the 60-day period if the Board notifies the investor in writing of its intention not to disapprove the investment.

(2) The Board may extend the 60-day period for an additional 30 days if the Board determines that the investor has not furnished all necessary information or that any material information furnished is substantially inaccurate. The Board may disapprove an investment if the necessary information is provided within a time insufficient to allow the Board reasonably to consider the information received.

(3) Within three days of a decision to disapprove an investment, the Board shall notify the investor in writing and state the reasons for the disapproval.

(c) *Time period for investment.* An investment in an export trading company that has not been disapproved shall be made within one year from the date of the notice not to disapprove, unless the time period is extended by the Board or by the appropriate Reserve Bank.

(d) *Time period for calculating revenues.* For any export trading company that commenced operations two years or more prior to August 23, 1988, the four-year period within which to calculate revenues derived from its activities under §211.32(a) of this part shall be deemed to have commenced with the beginning of the 1988 fiscal year for that export trading company. For all other export trading companies, the four-year period shall commence with the first fiscal year after the respective export trading company has been in operation for two years.

Subpart D—International Lending Supervision

SOURCE: 49 FR 5592, Feb. 13, 1984, unless otherwise noted.

§211.41 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of the International Lending Supervision Act of 1983 (Pub. L. 98-181, title IX, 97 Stat. 1153) ("International Lending Supervision Act"); the Federal Reserve Act (12 U.S.C. 221 *et seq.*) ("FRA"), and the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) ("BHC Act").

(b) *Purpose and scope.* This subpart is issued in furtherance of the purposes of the International Lending Supervision Act. It applies to State banks that are members of the Federal Reserve System ("State member banks"); corporations organized under section 25(a) of the FRA (12 U.S.C. 611 through 631) ("Edge Corporations"); corporations operating subject to an agreement with the Board under section 25 of the FRA (12 U.S.C. 601 through 604a) ("Agreement Corporations"); and bank holding companies (as defined in section 2 of the BHC Act (12 U.S.C. 1841(a)) but not including a bank holding company that is a foreign banking organization as defined in §211.21(n) of this regulation.

[49 FR 5592, Feb. 13, 1984, as amended at 58 FR 46076, Sept. 1, 1993]

§211.42 Definitions.

For the purposes of this subpart:

(a) *Banking institution* means a State member bank; bank holding company; Edge Corporation and Agreement Corporation engaged in banking. *Banking institution* does not include a *foreign banking organization* as defined in §211.21(n).

(b) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(c) *International assets* means those assets required to be included in banking institutions' *Country Exposure Report* forms (FFIEC No. 009).

(d) *International loan* means a loan as defined in the instructions to the *Report of Condition and Income* for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not

a citizen of, resident in, or organized or incorporated in the United States.

(e) *International syndicated loan* means a loan characterized by the formation of a group of *managing* banking institutions and, in the usual case, assumption by them of underwriting commitments and participation in the loan by other banking institutions.

(f) *Loan agreement* means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) *Restructured international loan* means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) The terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) A new loan is made to, or for the benefit of, the borrower, enabling the borrower to service or refinance the existing debt.

(h) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

[49 FR 5592, Feb. 13, 1984, as amended at 49 FR 12197, Mar. 29, 1984; 58 FR 46076, Sept. 1, 1993]

§211.43 Allocated transfer risk reserve.

(a) *Establishment of Allocated Transfer Risk Reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the Board in accordance with this section.

(b) *Procedures and standards—(1) Joint agency determination.* At least annually, the Federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2) of this section, the following:

(i) Which international assets subject to transfer risk warrant establishment of an ATRR;

(ii) The amount of the ATRR for the specified assets; and

(iii) Whether an ATRR established for specified assets may be reduced.

(2) *Standards for requiring ATRR—(i) Evaluation of assets.* The Federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(A) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(1) Such obligors have failed to make full interest payments on external indebtedness;

(2) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(3) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(B) Whether no definite prospects exist for the orderly restoration of debt service.

(ii) *Determination of amount of ATRR.* (A) In determining the amount of the ATRR, the Federal banking agencies shall consider:

(1) The length of time the quality of the asset has been impaired;

(2) Recent actions taken to restore debt service capability;

(3) Prospects for restored asset quality; and

(4) Such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

(B) The initial year's provision for the ATRR shall be ten percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be fifteen percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the Federal banking agencies.

(3) *Board notification.* Based on the joint agency determinations under paragraph (b)(1) of this section, the Board shall notify each banking institution holding assets subject to an ATRR:

(i) Of the amount of the ATRR to be established by the institution for specified international assets; and

(ii) That an ATRR established for specified assets may be reduced.

(c) *Accounting treatment of ATRR—(1) Charge to current income.* A banking institution shall establish an ATRR by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Possible Loan Losses, and shall deduct the ATRR from "gross loans and leases" to arrive at "net loans and leases." The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(3) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. For banks, consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of *Consolidated Reports of Condition and Income* (FFIEC Nos. 031, 032, 033 and 034). For bank holding companies, the consolidation shall be in accordance with the principles set forth in the "Instructions to the Bank Holding Company Financial Supplement to Report F.R. Y-6" (Form F.R. Y-9). Edge and Agreement corporations engaged in banking shall report in accordance with instructions for preparation of the Report of Condition for Edge and Agreement Corporations (Form F.R. 2886b).

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Possible Loan Losses or a reduction in the principal amount of the

asset by application of interest payments or other collections on the asset. However, the Allowance for Possible Loan Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institutions's loan portfolio.

(5) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the Board or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§211.44 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98-181, 97 Stat. 1153) (ILSA), a banking institution shall submit to the Board, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the Board information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the Board on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the Federal banking agencies. The requirements to be prescribed by the agencies may include changes to existing reporting forms (such as the Country exposure Report, form FFIEC No. 009) or such other requirements as the agencies deem appropriate. The agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the agencies' judgment, have *de minimis* holdings of international assets.

(c) *Reservation of authority.* Nothing contained in this rule shall preclude the Board from requiring from a banking institution such additional or more

frequent information on the institution's holding of international assets as the Board may consider necessary.

[49 FR 5587, Feb. 13, 1984]

§211.45 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees exceeding the banking institution's administrative costs, as described in paragraph (c)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(b) *Amortizing fees.* Except as otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syn-*

dicated loan. Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

[49 FR 12197, Mar. 29, 1984]

INTERPRETATIONS

§ 211.601 Status of certain offices for purposes of the International Banking Act restrictions on interstate banking operations.

The Board has considered the question of whether a foreign bank's California office that may accept deposits from certain foreign sources (e.g., a United States citizen residing abroad) is a branch or an agency for the purposes of the grandfather provisions of section 5 of the International Banking Act of 1978 (12 U.S.C. 3103(b)). The question has arisen as a result of the definitions in the International Banking Act of *branch* and *agency*, and the limited deposit-taking capabilities of certain California offices of foreign banks.

The International Banking Act defines *agency* as "any office * * * at which deposits may not be accepted from citizens or residents of the United States," and defines *branch* as "any office * * * of a foreign bank * * * at which deposits are received" (12 U.S.C. 3101(1) and (3)). Offices of foreign banks in California prior to the International Banking Act were generally prohibited from accepting deposits by the requirement of State law that such offices obtain Federal deposit insurance (Cal. Fin. Code 1756); until the passage of the International Banking Act an office of a foreign bank could not obtain such insurance. California law, however, permits offices of foreign banks, with the approval of the Banking Department, to accept deposits from any person that resides, is domiciled, and maintains its principal place of business in a foreign country (Cal. Fin. Code 1756.2). Thus, under a literal reading of the definitions of *branch* and *agency* contained in the International Banking Act, a foreign bank's California office that accepts deposits from certain foreign sources (e.g., a U.S. citizen residing abroad), is a branch rather than an agency.

Section 5 of the International Banking Act establishes certain limitations on the expansion of the domestic deposit-taking capabilities of a foreign bank outside its home State. It also grandfathers offices established or applied for prior to July 27, 1978, and permits a foreign bank to select its home State from among the States in which it operated branches and agencies on the grandfather date. If a foreign bank's office that was established or applied for prior to June 27, 1978, is a *branch* as defined in the International Banking Act, then it is grandfathered as a branch. Accordingly, a foreign bank could designate a State other than California as its home State and subsequently convert its California office to a full domestic deposit-taking facility by obtaining Federal deposit insurance. If, however, the office is determined to be an *agency*, then it is grandfathered as such and the foreign bank may not expand its deposit-taking capabilities in California without declaring California its home State.

In the Board's view, it would be inconsistent with the purposes and the legislative history of the International Banking Act to enable a foreign bank to expand its domestic interstate deposit-taking capabilities by grandfathering these California offices as branches because of their ability to receive certain foreign source deposits. The Board also notes that such deposits are of the same general type that may be received by an Edge Corporation and, hence in accordance with section 5(a) of the International Banking Act, by branches established and operated outside a foreign bank's home State. It would be inconsistent with the structure of the interstate banking provisions of the International Banking Act to grandfather as full deposit-taking offices those facilities whose activities have been determined by Congress to be appropriate for a foreign bank's out-of-home State branches.

Accordingly, the Board, in administering the interstate banking provisions of the IBA, regards as agencies those offices of foreign banks that do not accept domestic deposits but that may accept deposits from any person

that resides, is domiciled, and maintains its principal place of business in a foreign country.

[45 FR 67309, Oct. 10, 1980]

§ 211.602 Investments by United States Banking Organizations in Foreign Companies that Transact Business in the United States.

Section 25(a) of the Federal Reserve Act (12 U.S.C. 611, the “Edge Act”) provides for the establishment of corporations to engage in international or foreign banking or other international or foreign financial operations (“Edge Corporations”). Congress has declared that Edge Corporations are to serve the purpose of stimulating the provision of international banking and financing services throughout the United States and are to have powers sufficiently broad to enable them to compete effectively with foreign-owned institutions in the United States and abroad. The Board was directed by the International Banking Act of 1978 (12 U.S.C. 3101) to revise its regulations governing Edge Corporations in order to accomplish these and other objectives and was further directed to modify or eliminate any interpretations that impede the attainment of these purposes.

One of the powers of Edge Corporations is that of investing in foreign companies. Under the relevant statutes, however, an Edge Corporation is prohibited from investing in foreign companies that engage in the general business of buying or selling goods, wares, merchandise or commodities in the United States. In addition, an Edge Corporation may not invest in foreign companies that transact any business in the United States that is not, in the Board’s judgment, “incidental” to its international or foreign business. The latter limitation also applies to investments by bank holding companies (12 U.S.C. 1843(c)(13)) and member banks (12 U.S.C. 601).

The Board has been asked to determine whether an Edge Corporation’s minority investment (involving less than 25 percent of the voting shares) in a foreign company would continue to be permissible after the foreign company establishes or acquires a United States subsidiary that engages in domestic activities that are closely relat-

ed to banking. The Board has also been asked to determine whether an Edge Corporation’s minority investment in a foreign bank would continue to be permissible after the foreign bank establishes a branch in the United States that engages in domestic banking activities. In the latter case, the branch would be located outside the State in which the Edge Corporation and its parent bank are located.

In the past the Board, in exercising its discretionary authority to determine those activities that are permissible in the United States, has followed the policy that an Edge Corporation could not hold even a minority interest in a foreign company that engaged, directly or indirectly, in any purely domestic business in the United States. The United States activities considered permissible were those internationally related activities that Edge Corporations may engage in directly. If this policy were applied to the subject requests, the Edge Corporations would be required to divest their interests in the foreign companies notwithstanding the fact that, in each case, the Edge Corporation, as a minority investor, did not control the decision to undertake activities in the United States, and that even after the United States activities are undertaken the business of the foreign company will remain predominantly outside the United States.

International banking and finance have undergone considerable growth and change in recent years. It is increasingly common, for example, for United States institutions to have direct or indirect offices in foreign countries and to engage in activities at those offices that are domestically as well as internationally oriented. In this climate, United States banking organizations would be placed at a competitive disadvantage if their minority investments in foreign companies were limited to those companies that do no domestic business in the United States. Moreover, continued adherence to the existing policy would be contrary to the declaration in the International Banking Act of 1978 that Edge Corporations’ powers are to be sufficiently broad to enable them to compete effectively in the United States and abroad. Furthermore, where the activities to

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be conducted in the United States by the foreign company are banking or closely related to banking, it does not appear that any regulatory or supervisory purpose would be served by prohibiting a minority investment in the foreign firm by a United States banking organization.

In view of these considerations, the Board has reviewed its policy relating to the activities that may be engaged in in the United States by foreign companies (including foreign banks) in which Edge Corporations, member banks, and bank holding companies invest. As a result of that review, the Board has determined that it would be appropriate to interpret sections 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 601, 611) and section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13)) generally to allow United States banking organizations, with the prior consent of the Board, to acquire and hold investments in foreign companies that do business in the United States subject to the following conditions:

(1) The foreign company is engaged predominantly in business outside the United States or in internationally related activities in the United States;* (2) the direct or indirect activities of the foreign company in the United States are either banking or closely related to banking; and (3) the United States banking organization does not own 25 percent or more of the voting stock of, or otherwise control, the foreign company. In considering whether to grant its consent for such investments, the Board would also review the proposals to ensure that they are consistent with the purposes of the Bank Holding Company Act and the Federal Reserve Act.

[46 FR 8437, Jan. 27, 1981]

*This condition would ordinarily not be met where a foreign company merely maintains a majority of its business in international activities. Each case will be scrutinized to ensure that the activities in the United States do not alter substantially the international orientation of the foreign company's business.

§ 211.603 Commodity swap transactions.

For text of interpretation relating to this subject, see § 208.128 of this chapter.

[56 FR 63408, Dec. 4, 1991]

PART 212—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

212.1 Authority, purpose, and scope.

212.2 Definitions.

212.3 Prohibitions.

212.4 Interlocking relationships permitted by statute.

212.5 Regulatory Standards exemption.

212.6 Management Consignment exemption.

212.7 Change in circumstances.

212.8 Enforcement.

212.9 Effect of Interlocks Act on Clayton Act.

AUTHORITY: 12 U.S.C. 3201-3208; 15 U.S.C. 19.

SOURCE: 61 FR 40302, Aug. 2, 1996, unless otherwise noted.

§ 212.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anti-competitive effect.

(c) *Scope.* This part applies to management officials of state member banks, bank holding companies, and their affiliates.

§ 212.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held by an individual include shares held by members of his or her immediate family. "Immediate family" means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.